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A GUIDE
TO THE
INCOME TAX ACTS
FOR THE USE OF THE
ENGLISH INCOME TAX PAYER.

BY
ARTHUR M. ELLIS, LL.B. (LOND.),
SOLICITOR,

Author of "A Guide to the House Tax Acts."

—
THIRD EDITION.
—



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PREFACE TO THIRD EDITION.

A THIRD EDITION having been called for, the Acts of Parliament which have been passed, and the Cases which have been decided relating to Income Tax, since the last edition was published, have been noted in the present Edition.

A. M. E.

August, 1893.

PREFACE TO SECOND EDITION.

THE fact of a Second Edition having been called for within a year of the publication of the first makes me hope that the Work has been found useful. This Edition has been carefully revised, and I hope that it may be found free from errors, although the task I have set myself, of giving a connected reading of more than twenty-four Acts of Parliament, the language of which is not more free from ambiguity than such language usually is, is no easy one. The cases which have been decided since the last Edition was published are noted in the present Edition. The cases given as "unreported" are to be found in a series of reports printed for the use of the Inland Revenue Office, but not in the reports generally accessible to the public. I have been indebted for useful information on some points to the new edition of "Bourdin's Land Tax," recently edited by Mr. Shirley Bunbury, Assistant Registrar of Land Tax.

A. M. E.

February, 1886.

PREFACE TO FIRST EDITION.

My aim in writing this book has been to provide the income tax payer in England with a guide to the enactments scattered through, at least, four-and-twenty Acts of Parliament, in pursuance of which that tax is assessed and levied. I have divided the book into four chapters; the first describes the officials concerned in assessing, charging, and collecting, the tax; the second deals with the properties and profits which are the subjects of the tax; the third describes the methods of assessment and collection; and the fourth treats of the allowances, abatements, and relief, which the income tax payer may claim on one ground or another, and of the modes in which assessments erroneously made are corrected. In treating of these topics I have used, as far as possible, the very words of the Acts of Parliament; and I hope it will be found that I have brought into something like an orderly arrangement all the enactments in the existing Acts relating to the income tax which concern the English income tax payer. I have made no attempt to bring in those which only concern the officials employed, or deal with the routine of the departments. The cases which have been decided upon the Income Tax Acts will be found shortly stated in connection with the enactments which they respectively elucidate. References to the Acts of Parliament quoted will be found

at the foot of each page; and I have added an index which I hope will enable the reader to find readily any enactment falling within the scope of the work to which he may have occasion to refer. To make the work of reference easier, I have added in the margins of the pages, where the paragraphs are of some length, short analyses of their contents. A list of cases cited, and a list of statutes, will be found preceding the first chapter. The work can make no claim to originality: I hope it may make some to utility.

A. M. E.

February, 1885.

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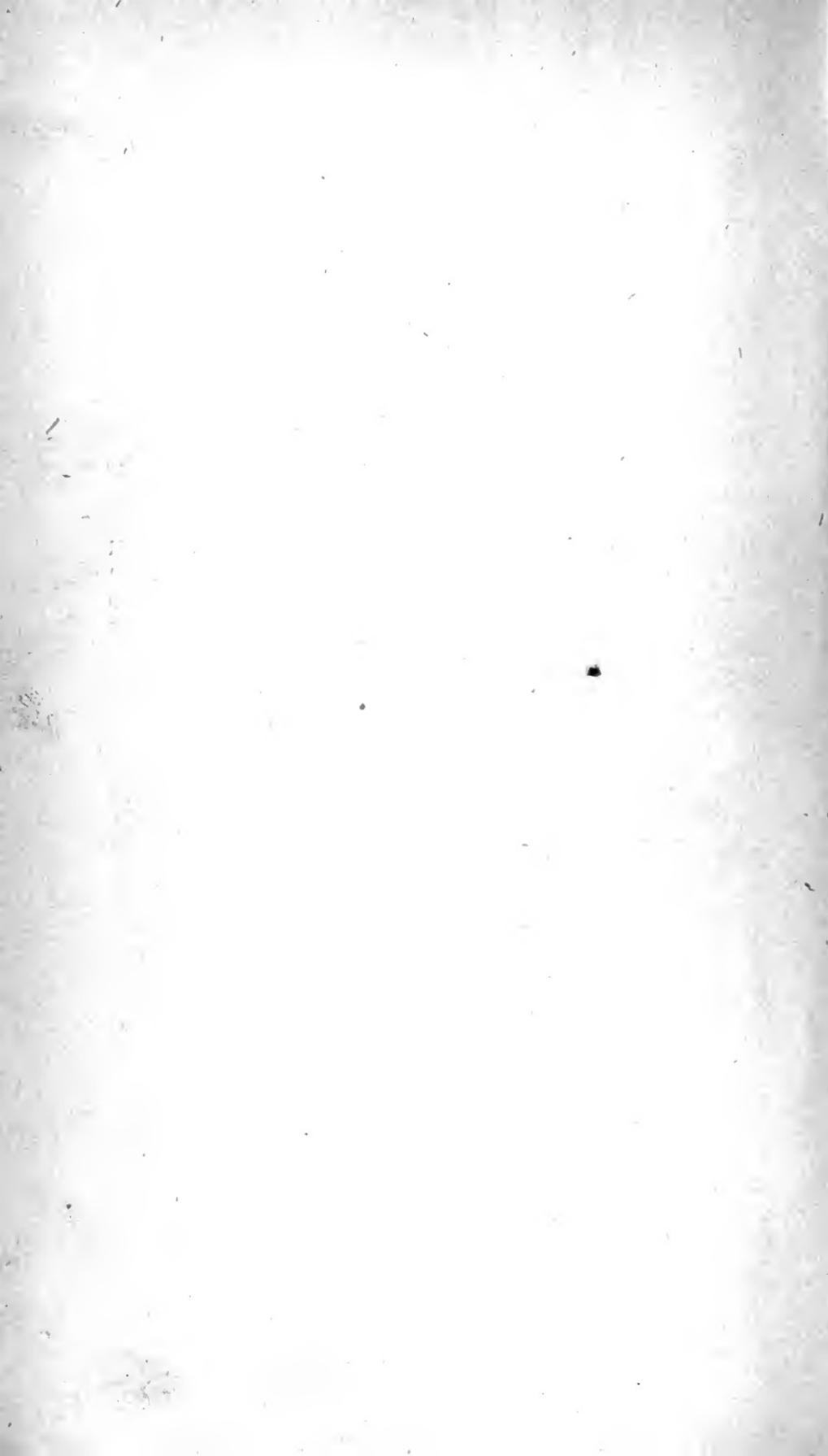


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ERRATUM.

Page 219, note ³, *for* “48 & 49 Vict. c. 35,”
read “48 & 49 Vict. c. 51.”



INCOME TAX ACTS.

CHAPTER I.

THE INCOME TAX AND THE OFFICIALS CONCERNED IN ASSESSING, CHARGING, AND COLLECTING IT.

The Income Tax an Annual Tax.—The income tax is levied year by year, under the authority of an Act of Parliament passed annually, which determines the amount of the tax for the current financial year—that is, for the year which ¹ begins on the 6th April and ends on the 5th April following. The machinery by which the tax is charged and collected derives its force from each annual Act, which generally continues the existing machinery, with, perhaps, some changes made in certain particulars in which experience has suggested a possibility of improvement. The income tax, as we know it, was first established in 1842, and the Act of that year (5 & 6 Vict. c. 35) which imposed the tax constituted the machinery, which, in its main features, still remains. In describing the authorities concerned in the business of assessing, charging, and collecting, the income tax, the property, profits, and gains, which are the subject of the tax,

¹ 43 & 44 Vict. c. 19, s. 48.

Chap. I. the mode of assessing, charging, and collecting, the tax, and the means to be employed in order to secure the various exemptions, allowances, and deductions, which may be claimed by persons who are assessed, we shall have to notice all the provisions, in whatever Act contained, by which at the present time these subjects are regulated ; but it must be remembered that all these provisions are, strictly, in force for one year only, and depend for their validity in any particular year upon the Act of that year which refers to, and continues, them, and without which they would expire. So much is this the case, that, to prevent the inconvenience which would otherwise arise from the passing of the annual Act being delayed until after the close of the financial year, it has now become the practice to insert in each annual Act a clause "to ensure the collection in due time of any duties of income tax which may be granted for the ensuing year," by which all provisions in any Act relating to the income tax which are in force on the 5th April, in the year current at the time the annual Act is passed (that is, on the last day of the then current financial year) are made to have full force and effect with regard to the duties of income tax which may be granted in the ensuing year.

Officials.—The persons concerned with the assessment and collection of the income tax are (1) The Commissioners of Her Majesty's Treasury, (2) The Commissioners of Inland Revenue, (3) The Commis-

sioners for Special Purposes, (4) The Commissioners for General Purposes, (5) The Additional Commissioners, (6) The Clerks to the Commissioners, (7) The Surveyors, (8) The Assessors, and (9) The Collectors.

Chap. I.

The Commissioners of Her Majesty's Treasury.—
 The Commissioners of Her Majesty's Treasury, or, to give them their full title, the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, are the persons appointed by her Majesty's letters patent for executing the offices of Lord High Treasurer of Great Britain and Lord High Treasurer of Ireland. The signatures of any two of the Commissioners are sufficient to validate any document which the Commissioners are required to sign. In the ⁴Taxes Management Act, 1880, these Commissioners are compendiously styled “the Treasury,” and we shall for the future in speaking of them adopt that term. The Treasury ⁵has chief control, and superintendence, as regards the assessment, and collection, of income tax.

The Commissioners of Inland Revenue.—The Commissioners of Inland Revenue are ⁶a consolidated

¹ To whom we should, perhaps, add Inspectors. See note⁵ p. 25, *post*.

² 56 Geo. III. c. 98, s. 2.

³ 12 & 13 Vict. c. 89.

⁴ 43 & 44 Vict. c. 19.

⁵ 56 Geo. III. c. 98, s. 2; 43 & 44 Vict. c. 19, s. 12.

⁶ 12 & 13 Vict. c. 1, s. 1.

Chap. I. Board of Commissioners representing the old Commissioners of Excise, and Commissioners of Stamps and Taxes, ¹whose powers and authorities they exercise. The Commissioners are appointed ²by her Majesty under the Great Seal of the United Kingdom, and hold office during pleasure. ³For income tax purposes any two of the Commissioners form a quorum. ⁴Their chief office, which is called the "Chief Office of Inland Revenue," must be at such place, within the limits designated as the limits of the "Chief Office of Excise" by an Act passed in the eighth year of George IV., as the Treasury appoints. These limits are ⁵the cities of London and Westminster, the borough of Southwark and the suburbs thereof, the parishes within the ⁶weekly bills of mortality, and the parishes of St. Marylebone and St. Pancras in the County of Middlesex. The Commis-

¹ 12 & 13 Vict. c. 1, s. 3.

² 12 & 13 Vict. c. 1, s. 2.

³ 43 & 44 Vict. c. 19, s. 5.

⁴ 12 & 13 Vict. c. 1, s. 5.

⁵ 7 & 8 Geo. IV. c. 53, s. 14.

⁶ The weekly bills of mortality are accounts of the births and deaths within a certain district, which has varied from time to time, but may be said now to be comprised in the general description "the cities of London and Westminster, the borough of Southwark, and the suburbs thereof." The bills of mortality are said to date from 1592, but their regular publication from 1603, with some intermission during the Great Fire of London. The parishes of St. Marylebone and St. Pancras have never been included in the district.

sioners of Inland Revenue are styled in the ¹ Taxes Management Act, 1880, "the Board," and we shall adopt that term. ²The Board have the direction, and management, under the Treasury, of the assessment and collection of the income tax. We may conveniently describe here the offices of the Receiver-General of Inland Revenue and the Collectors of Inland Revenue, whom we shall by and by have occasion to mention. ³The Receiver-General of Inland Revenue is an officer who represents the old Receiver-General of Excise, and Receiver-General of Stamps and Taxes. His office was created by the same Act which constituted the Board, and was a necessary consequence of the consolidation of the two old Commissionerships of Excise and Stamps and Taxes. ⁴The Receiver-General of Inland Revenue holds office during the pleasure of the Treasury. The ⁵Collectors of Inland Revenue are officers appointed by the Board to be Collectors, or officers for receipt, either of one, or of several, of the branches, or descriptions, of revenue under the management of the Board, who appoint the counties, or districts, or circuits, of receipt in which such Collectors respectively act.

The Commissioners for Special Purposes.—⁶ The

¹ 43 & 44 Vict. c. 19.

² 16 & 17 Vict. c. 34, s. 4; 43 & 44 Vict. c. 19, s. 12.

³ 12 & 13 Vict. c. 1, s. 6, and see sect. 17.

⁴ 12 & 13 Vict. c. 1, s. 6.

⁵ 12 & 13 Vict. c. 1, s. 15.

⁶ 5 & 6 Vict. c. 35, s. 23, and 12 & 13 Vict. c. 1, s. 17.

Chap. I. Board, and such persons as the Treasury by warrant under their hands and seals from time to time appoint as they think expedient, are Commissioners for Special Purposes, or, as we shall call them shortly, Special Commissioners. No other qualification is required of a Special Commissioner than the possession of his office. The Special Commissioners are allowed such salary for their trouble, and such incidental expenses, as the Treasury may direct to be paid to them. The Treasury cause an account of all appointments of Special Commissioners with salaries to be laid before each House of Parliament within twenty days after appointment, if Parliament is then sitting, and if not, within twenty days after the meeting of Parliament. The following persons are also Special Commissioners for the purposes mentioned in connection with such persons respectively in the following list:—

Governor
and Direc-
tors of
Bank of
England.

¹ The Governor and Directors of the Company of the Bank of England are Commissioners for the purpose of assessing and charging the duties of income tax in respect of all annuities payable to the said company at the receipt of the exchequer, and the profits attached to the same and divided amongst the several proprietors; and in respect of all annuities, dividends, and shares of annuities, payable out of the revenue of the United Kingdom to any persons, cor-

¹ 5 & 6 Vict. c. 35, s. 24.

porations, or companies whatever, and en- Chap. I.
 trusted to the said governor and company for
 such payment; and in respect of all profits and
 gains of the said company chargeable under
 Schedule D.; and in respect of all other divi-
 dends, annuities, pensions, and salaries payable
 by the said company; and in respect of all other
 profits chargeable with income tax and arising
 within any office or department under the
 management or control of the said governor
 and company.

¹ The Commissioners for the Reduction of the National Debt are Commissioners for the purpose of assessing and charging duties of income tax in respect of all annuities payable by them out of the revenue of the United Kingdom; and in respect of all salaries and pensions payable in any office or department under their management or control.

² The Lord Chancellor, the judges, and the principal officer or officers of each Court or department of office under her Majesty throughout Great Britain, whether the same is civil, judicial, or criminal, ecclesiastical or commissary, military or naval, have authority to appoint Commissioners from amongst the officers of each Court or department of office respectively, and

¹ 5 & 6 Vict. c. 35, s. 28.

² 5 & 6 Vict. c. 35, s. 30.

Chap. I.

the persons so appointed, or any three or more of them, not in any case exceeding seven, are Commissioners for assessing and charging duties of income tax in relation to the offices in each such Court or department accordingly. But in relation to each department of office, not being one of her Majesty's Courts, civil, judicial, or criminal, or an ecclesiastical or commissary Court, the Treasury, whenever they think it expedient, settle and determine in what particular departments Commissioners shall not be appointed; and in such case they settle and determine in what other department of office the officers of that department in which Commissioners are not appointed shall be assessed. And whenever there is default in the officers of any department, or in any Court aforesaid, in appointing Commissioners, the Treasury appoint fit and proper persons to be Commissioners in the several Courts and departments of office aforesaid, for which they are appointed, from amongst the officers in the several departments respectively, uniting, in cases requiring the same, two or more offices under the same Commissioners, but nevertheless with distinct officers from each office so united for assessing the duties of income tax. The Treasury have authority to determine any dispute which may arise touching the department in which any office is executed.

¹ The Speaker and the principal clerk of either **Chap. I.**
 House of Parliament, the principal or other officers in the several Counties Palatine and the Duchy of Cornwall, or in any ecclesiastical Court, or in any inferior Court of Justice, whether of law or equity, or criminal or justiciary, or under any ecclesiastical body or corporation, whether aggregate or sole, throughout Great Britain, have authority to appoint Commissioners from amongst the persons executing offices in either House of Parliament, or in their respective departments of office, and the persons so appointed, or any three of them, not in any case exceeding seven, are Commissioners for assessing and charging the duties of income tax in relation to the places, offices, and employments of profit in each House of Parliament, and in each such department respectively. The names of the Commissioners appointed must be transmitted to the Board, and in default of appointment as aforesaid, the appointments are made by the Treasury.

² The Mayor, Aldermen, and Common Council, or the principal officers or members, by whatever name they are called, of every corporate city,

¹ 5 & 6 Vict. c. 35, s. 31.

² 5 & 6 Vict. c. 35, s. 32. This section was repealed by s. 9 of the Customs and Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), but was revived by sect. 7 of the Customs, Inland Revenue, and Savings Bank Act, 1877 (40 & 41 Vict. c. 13).

Chap. I.

borough, town, or place, and of every cinque port throughout Great Britain, or any three or more of them, not exceeding seven, are Commissioners for assessing and charging the duties of income tax in relation to the public offices, or employments of profit, in such city, corporation, and cinque port, and in every guild, fraternity, company, or society, whether corporate or not corporate, within such city, corporation, or cinque port.

¹ The appointment of Commissioners in relation to the duties of income tax upon the offices, and employments of profit, mentioned in the foregoing list, must be notified to the Board within one calendar month after the 5th of April in every year, and in default of notification the appointment devolves upon the Treasury, to whom the Board notify the default. If the appointment is not made by the Treasury within a month after the default is notified to them, the General Commissioners for the district act until another appointment is made. ² All persons appointed Special Commissioners are required, before acting in relation to ³the duties in Schedule D., to take ⁴the prescribed oath, which may be administered by a General or Special Commissioner, and any Special Commissioner acting (except in administering the

¹ 5 & 6 Vict. c. 35, s. 33.

² 5 & 6 Vict. c. 35, s. 38.

³ As to these duties, see *post*, pp. 102 *et seq.*

⁴ 5 & 6 Vict. c. 35, s. 16.

oath) before he has taken the oath, is liable to a Chap. I. penalty of 100*l.*

The Commissioners for General Purposes.—The Commissioners for General Purposes, or, as we shall call them shortly, the General Commissioners, are selected from another body of Commissioners, called the Land Tax Commissioners. We must begin, therefore, by explaining who the Land Tax Commissioners are. In the first place,¹ all persons who act as justices of the peace for any county, shire, riding, division, or district, and who possess the estate qualification presently referred to, are Land Tax Commissioners within their respective counties, &c. In addition to these *ex officio* Commissioners, certain other persons holding good positions in the localities in which they reside are appointed from time to time by Act of Parliament to be Land Tax Commissioners for the several counties, divisions of counties, cities, boroughs, and other places, which form² separate districts for the purposes of the land tax.

¹ 7 & 8 Geo. IV. c. 75, s. 1.

² By "districts" we must be understood here to mean the "divisions of the country for which separate Commissioners act," not the "parishes and other districts for which separate Assessors act." The case of *Reg. v. Land Tax Commissioners for the Tower Division* (2 E. & B. 694) introduced the use of the word "division" for the Commissioners' district, and of the word "district" for the Assessors' district. The "divisions" may be found in 38 Geo. III. c. 5, s. 2. The enactment is concerned with the proportions in which the several "divisions" are to be assessed and taxed, and it proceeds

Chap. I. Formerly it was the custom to introduce their names and addresses and the localities in which they were empowered to act into the Act by which they were appointed ; but in the year 1869 the practice seems to have commenced, which has since been continued, of including these particulars in a schedule, which is signed by, and deposited with, the clerk of the House of Commons, and afterwards published in the London Gazette. ¹ The last Act appointing Land Tax Commissioners was passed on the 25th June, 1886, and, as it refers to no Act of the same kind earlier than the 7 & 8 Geo. IV. c. 75, we may infer that the names of all existing Land Tax Commissioners, who are not justices of the peace, may be found in that and the subsequent Acts which have been passed for the same purpose, or (since 1869) in the schedules referred to by these Acts, and published in the London Gazette. For the estate qualification required of a Land Tax Commissioner, and the oaths to be taken by him before exercising his office, we must refer to the enactments enumerated ² below. The General Commissioners are

The
General
Commis-
sioners.

upon the principle of stating the proportion in which some particular city, town, borough, liberty, or place in a county is to be assessed and taxed, and then the proportion in which the rest of the county is to be taxed. The land tax, which had before been an annual tax, was made perpetual by 38 Geo. III. c. 60.

¹ 49 & 50 Vict. c. 47.

² 38 Geo. III. c. 5, ss. 49, 50, 92—95 ; 38 Geo. III. c. 48, ss. 1, 3 ; 9 Geo. IV. c. 38, s. 3.

selected from the Land Tax Commissioners in the following manner:—¹ The Board, whenever they deem it necessary to do so, convene, by notice inserted in the London Gazette, meetings of the Land Tax Commissioners; and thereupon the Land Tax Commissioners for each county, riding, shire, or division of the same, and for each city, borough, cinque port, liberty, franchise, town, and place, for which separate Commissioners have been appointed with exclusive jurisdiction for putting in execution the ²Land Tax Acts within the same, meet at the time and place appointed by the notice, within the district for which they act, and there choose such of the Land Tax Commissioners appointed for such district as possess the qualifications ³presently mentioned, and are fit and proper persons to act as General Commissioners for the same district. The names of the persons chosen to be General Commissioners are set down in writing in the order in which the major part of the Land Tax Commissioners present think fit they should be appointed General Commissioners; and any seven, or any number less than seven not less than three, of the persons whose names are set down

¹ 5 & 6 Vict. c. 35, s. 4; 12 & 13 Vict. c. 1, s. 17.

² The phrase “Land Tax Acts” is used in the sense in which it is used in the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), where it is defined (s. 5) as “any Act or part of any Act relating in any way to the assessment or redemption of the Land Tax.”

³ See *post*, pp. 18—20.

Chap. I. to act as General Commissioners, in the order in which their names are set down, are the General Commissioners for the district. Vacancies among the General Commissioners are supplied from a list made by the Land Tax Commissioners in the way we shall ¹presently mention. If the Land Tax Commissioners present at any meeting cannot find amongst the Land Tax Commissioners for the district seven persons to act as General Commissioners, and seven to supply vacancies, they may appoint any persons residing within the district and possessing the required qualification, who are in their judgment fit and proper persons, although not Land Tax Commissioners, to be General Commissioners, until the two numbers of seven and seven have been supplied; and if they cannot find amongst the Land Tax Commissioners of the district, and such other persons as have been referred to, the requisite number of fourteen, they may select so many persons as may be required to make up that number from the Land Tax Commissioners acting for any adjoining or neighbouring district. ²In the case of a city, borough, town, or other place of the kind, if a sufficient number of persons capable of acting as General Commissioners are not chosen or appointed, any person qualified to act as General Commissioner for the county at large, or riding, or

¹ See *post*, pp. 15, 16.

² 5 & 6 Vict. c. 35, s. 6.

If number
of persons
in district
qualified to
be General
Commiss-
ioners is
insuffi-
cient.

shire, in, or adjoining to, which such city, &c. is ^{Chap. I.} situate, may be chosen to act as General Commissioner for such city, &c. ; and in the case of a city, &c., as of a county, &c., a person otherwise duly qualified, and resident within the city, &c., although not a Land Tax Commissioner, may be appointed a General Commissioner in case of need. ¹Where seven persons duly qualified have been chosen to act as General Commissioners for any district, no other person may interfere. ²In case any General Commissioner dies, or declines to act, or having ^{In case any General Commis- sioner dies.} begun to act declines to act any further, the remaining General Commissioners choose one of the persons whose names appear on the vacancy list, who, if he has been chosen in the same manner as the person in regard of whom the vacancy occurs, is appointed to act in his place. ³The vacancy list is ^{The “vacancy”} made thus:—⁴the Land Tax Commissioners at their list. meeting, after choosing General Commissioners, go on to set down the names of persons qualified to be General Commissioners, and any seven, or any number less than seven not less than three, of these last-named persons, whose names appear in the Land

¹ 5 & 6 Vict. c. 35, s. 4. Except, of course, when expressly authorised to do so. That this is a necessary qualification must be already evident; it is provided for by the words contained in the section quoted, “except as hereinafter mentioned,” and its extent will appear as we proceed.

² 5 & 6 Vict. c. 35, s. 7.

³ 5 & 6 Vict. c. 35, s. 6.

⁴ 5 & 6 Vict. c. 35, ss. 4, 7.

Chap. I. Tax Commissioners' list next in order after the names of those persons who have been chosen General Commissioners are Commissioners to supply vacancies in the body of General Commissioners. If the Land Tax Commissioners cannot find within their district seven persons to put upon the vacancy list, they may fill up the number in the same manner as in like case they may fill up the number of General Commissioners. The vacancy list is made up and renewed from time to time as need requires by the Land Tax Commissioners at their meetings; and if it happens at any time to be defective, so that the due number of Commissioners cannot be supplied from it, it is filled up and renewed by the acting General Commissioners for the district. In certain cities and towns persons may be chosen to act with the General Commissioners together with the General Commissioners who have been chosen in the ordinary way. ¹Thus, in the City of London two Commissioners and two to supply their vacancies may be named by the Mayor and Aldermen of London out of eight persons, four of whom must be aldermen, to be returned to them by the Common Council; two other Commissioners and two to supply their vacancies may be named by the Governor and Directors of the Bank of England; and one other Commissioner and one to supply his vacancy may be named by each of the following companies, viz.:—the Governor

In certain
cities and
towns per-
sons may
be chosen
to act
with the
General
Commis-
sioners.

¹ 5 & 6 Vict. c. 35, s. 5.

and Directors of the Royal Exchange Assurance Company, the Governor and Directors of the London Assurance Company, the Directors for conducting and managing the affairs of the East and West India Dock Company, and the Directors for conducting and managing the London Dock Company, and the Saint Katharine Dock Company respectively for the time being. In the City of Norwich, the magistrates and justices of the peace acting in, and for, the city may choose eight persons to be Commissioners and eight persons to supply their vacancies, not more than four of the first eight, and four of the second eight, to be chosen from among the magistrates and justices, and the remainder to be chosen from among the inhabitants of the city. In each of the following cities and towns, viz. :—Bristol, Exeter, Kingston-upon-Hull, Newcastle - upon - Tyne, Birmingham, Liverpool, Leeds, Manchester, King's Lynn, and Great Yarmouth, the magistrates and justices of the peace acting in, and for, the city or town, together with the justices of the peace acting in, and for, the county, riding, or division, in which the same is situated, may choose eight persons to be Commissioners, and eight to supply their vacancies. ¹ The names of all persons so chosen must be returned to the Board.

² If in any district there is neglect in appointing General Commissioners, or the General Commiss-

¹ 5 & 6 Vict. c. 35, s. 5, and 12 & 13 Vict. c. 1, s. 17.

² 5 & 6 Vict. c. 35, s. 8, and 12 & 13 Vict. c. 1, s. 17.

Chap. I. sioners appointed neglect, or refuse, to act, or neglect in appointing General Commissioners, or the General Commissioners appointed decline to act.

sioners appointed neglect, or refuse, to act, or having begun to act decline to act further, the Land Tax Commissioners for the district, on notice of the neglect to appoint, &c., being given to their Clerk by any Surveyor authorized by the Board to give such notice, being duly qualified to act as General Commissioners, or any of them not exceeding seven in number, must act as General Commissioners; and if there is in any district a want of General Commissioners, the Commissioners for any adjoining district in the same county, riding, division, or shire, if possessing the required qualification, must, on receiving like notice, act as General Commissioners, by themselves or in concurrence with any persons willing to act as General Commissioners in the district in which such want occurs. If the persons before mentioned, to whom notice as aforesaid has been given, do not, within ten days after receiving the notice, take upon themselves to act as General

In certain cases of default, Special Commissioners must act.

Estate qualification for General Commissioners in England,

Commissioners, the ¹ Special Commissioners must act as General Commissioners within the district. ² The estate qualification required for any district, or division of any county in England, except the county of Monmouth, and for any of the ridings of the county of York, and for the cities or towns of London, Westminster, Bristol, Exeter, Kingston-upon-Hull, Newcastle-upon-Tyne, Norwich, Bir-

¹ See *ante*, pp. 5, 6.

² 5 & 6 Vict. c. 35, s. 10.

tingham, Liverpool, Leeds, Manchester, King's ^{Chap. I.} Lynn, and Great Yarmouth, is the possession of ^{except in} lands; tenements, or hereditaments, freehold, or ^{Mon-} copyhold, or leasehold whereof not less than seven ^{mouth-} years are unexpired, in Great Britain, of the value of ^{shire.} 200*l.* a year, or more, over and above all ground rents, incumbrances, and reservations, payable out of the same; or the possession of personal estate of the value of 5,000*l.*, or of a personal estate, or an interest therein, producing an annual income of 200*l.*; or the possession of lands, tenements, or hereditaments, and personal estate or an interest therein, which together are of the annual value of 200*l.*; or being the eldest son of some person who is possessed of an estate of thrice the value required as the qualification of a Commissioner in right of his own estate. One hundred pounds of personal estate is, for the purpose of qualifying in right of the Commissioner's own estate, reckoned as equivalent to 4*l.* a year; and an interest from personal estate of 4*l.* a year as equivalent to 100*l.* of personal estate. ¹The estate qualification re- Estate qualifica-
quired for the office of General Commissioner in tion for
any district or division of the county of Mon- General
mouth, or of any county in Wales, or in any city, Commis-
borough, cinque port, liberty, franchise, town or sioners in
place, in England or Wales, other than the cities Mon-
or towns before mentioned, is the possession of an mouthshire
estate of the nature, and of four-fifths of the value, or Wales.

¹ 5 & 6 Vict. c. 35, s. 11.

Chap. I. required for the estate of a Commissioner acting for a district, or division, of a county in England (other than the county of Monmouth), or being the eldest son of a person possessed of an estate of thrice the value required as the qualification of a General Commissioner for the same county, &c. ¹ No estate consisting of lands or tenements for the qualification of a Commissioner need be situate in the county, riding, division, or shire, for which the person whose qualification it constitutes is a Commissioner.

Proof of qualification on person acting.

Oath to be taken by General Commissioner.

The proof of qualification lies on the person acting as Commissioner. ² Every General Commissioner before he begins to act in relation to the ³ duties contained in Schedule D. must take the ⁴ prescribed oath, which any one of the persons appointed General Commissioners may administer. The oath is subscribed by the person taking it, and any General Commissioner acting in relation to the duties in Schedule D. (except by administering the oath) is liable to a penalty of 100*l.*

The Additional Commissioners.—⁵ The Additional Commissioners are appointed by the General Commissioners. The mode of appointment is as follows:— Whenever the General Commissioners for any district

¹ 5 & 6 Vict. c. 35, s. 14.

² 5 & 6 Vict. c. 35, s. 38.

³ As to these duties, see *post*, pp. 102 *et seq.*

⁴ The oath is given in Schedule F. of 5 & 6 Vict. c. 35.

⁵ 5 & 6 Vict. c. 35, s. 16.

think it expedient that the powers given by the Income Tax Acts should be executed by Commissioners other than, and in addition to, General Commissioners appointed in the way we have described, and at the same time do not desire to exercise the power given them, as we shall¹ presently explain, to appoint a greater number of General Commissioners, they, at any meeting held for that purpose, set down in writing lists of the names of such persons residing within their respective districts as are in their opinion fit and proper persons to act as Additional Commissioners, and have the estate qualification required of an Additional Commissioner, that is, an estate of the nature, and of one-half the amount, required for the qualification of a General Commissioner in the same district. The General Commissioners may appoint so many Additional Commissioners as they in their discretion, after taking into consideration the size of the district, and the number of persons to be assessed therein, think requisite. The lists of the names of the persons appointed Additional Commissioners are, when signed by the General Commissioners, sufficient authority for the persons appointed Additional Commissioners to act in that capacity.² Notice in writing of their appointment is given by the General Commissioners to the Additional Commissioners, through the Assessors of the parishes or

¹ See *post*, pp. 22, 23.

² 5 & 6 Vict. c. 35, s. 19.

Chap. I. places in which the Additional Commissioners reside; and the notice requires them to assemble on a day, not more than ten days after the date of the notice, when the oath which they are required to take is administered to them by the General Commissioners.

¹ The persons appointed to supply vacancies among the General Commissioners in any district may be appointed Additional Commissioners, until their services are required as General Commissioners. ² The General Commissioners may, whenever they think proper, divide the Additional Commissioners into district committees, and allot to each committee distinct parishes, wards, or places, in which such committees may act separately. Not more than seven persons may act together as Additional Commissioners for the same district, if not formed into several divisions in the manner above mentioned ; and no more than seven persons may act as Additional Commissioners on any committee into which the Additional Commissioners for the district are divided. When more than seven Additional Commissioners attend any meeting, the seven first in order on the list then present act, and the rest withdraw. Two Additional Commissioners form a quorum at any meeting of their body. ³ If the acting General Commissioners, whether they have been chosen, or act by virtue of

Acting
General
Commissioners

¹ 5 & 6 Vict. c. 35, s. 16.

² 5 & 6 Vict. c. 35, s. 20.

³ 5 & 6 Vict. c. 35, s. 21.

their appointment as Land Tax Commissioners, think **Chap. I.** it expedient that a greater number than seven General Commissioners, possessing the required estate qualification, should be appointed for any district, they may appoint more General Commissioners. General Commissioners.

If the General Commissioners avail themselves of this power to increase their number, they choose by lot not less than two, nor more than seven, of their own body, to execute the office of Additional Commissioners, and the remaining members of their body act as General Commissioners. If no Additional Commissioners are appointed specially to execute the powers vested in Additional Commissioners, the Acting General Commissioners, whether chosen, or acting by virtue of their appointment as Land Tax Commissioners, divide themselves, so that two of them at least are appointed to execute the powers vested in Additional Commissioners. If, after such appointment as last mentioned, there are not two persons at least remaining qualified to act as General Commissioners for the district, then the persons qualified to act as General Commissioners for any adjoining district may act as General Commissioners in the district in which the deficiency has occurred. All persons appointed Additional Commissioners are required,

Chap. I. before acting in relation to the ¹duties in Schedule D., to take the ²prescribed oath, which may be administered by a General or Special Commissioner; and ³every person acting as Additional Commissioner in relation to the duties in Schedule D. before he has taken the oath, is liable to a penalty of 100*l.*

Clerks to Commissioners.—⁴The General Commissioners in each district, at their first meeting in every year, which must be held before the 10th April, elect a fit person to be their Clerk; and the person who is elected Clerk becomes by virtue of such election sole Clerk to the Commissioners for the year, and is not removeable except for just cause, and at a meeting of the Commissioners for that purpose duly summoned by notice in writing, signed by the Commissioners, and served on each of the Commissioners who have qualified in, and for, the district, by the major part of the Commissioners present. The Clerk is not to take or receive any fees, gratuities, or perquisites, for anything done by him in his official character, except from the person appointed by the Board to pay him the allowances he is entitled to, which are set out in the first schedule to the ⁵Taxes Management Act,

¹ As to these duties, see *post*, pp. 102 *et seq.*

² The form of the oath is given in Schedule F. of 5 & 6 Vict. c. 35.

³ 5 & 6 Vict. c. 35, s. 38.

⁴ 5 & 6 Vict. c. 35, s. 9; 43 & 44 Vict. c. 19, s. 41.

⁵ 43 & 44 Vict. c. 19.

1880. Any vacancy occurring in the course of the year by the death, dismissal, or resignation of any Clerk is filled up by the General Commissioners electing a person to be Clerk for the remainder of the year. Any Clerk or Clerk's assistant wilfully obstructing, or delaying, the execution of the Income Tax Acts, or negligently conducting, or wilfully misconducting, himself in the exercise of his office, renders himself liable to a penalty of 100*l.*, and dismissal from his office, and becomes incapable of again acting as Clerk or Clerk's assistant. ¹The Clerk to the General Commissioners for any district, or his assistant, acts also as Clerk to the Additional Commissioners for the same district. ²Every person acting as Clerk, or Clerk's assistant, in relation to the ³duties in Schedule D. is required to take the ⁴prescribed oath, which may be administered by a General, or Special, or Additional Commissioner; and ²any person acting as Clerk or Clerk's assistant in relation to the duties in Schedule D. before he has taken the oath is liable to a penalty of 100*l.*

Surveyors.—⁵The surveyors are officers appointed

¹ 5 & 6 Vict. c. 35, s. 19.

² 5 & 6 Vict. c. 35, s. 38.

³ As to these duties, see *post*, pp. 102 *et seq.*

⁴ The form of the oath is given in Schedule F. of 5 & 6 Vict. c. 35.

⁵ 5 & 6 Vict. c. 35, s. 37; 43 & 44 Vict. c. 19, s. 17. The Inspectors, of whom frequent mention is made in the Acts relating to income tax, are chosen from the ranks of Sur-

Chap. I. from time to time by the Treasury for the survey and inspection of the duties of income tax. The Treasury appoint their allowances and salaries. ¹Every Surveyor is required, before he begins to act in relation to the ²duties in Schedule D., to take the ³prescribed oath, which any General, or Special, or Additional Commissioner may administer; and, if he acts in relation to the duties in Schedule D. before he has taken the oath, he is liable to a penalty of 100*l.* A Surveyor who ⁴wilfully makes a false and vexatious charge of duty, or wilfully delivers or causes to be delivered to the General Commissioners a false and vexatious ⁵certificate of charge of duty, or a false and vexatious ⁶certificate of objection to any supplementary return, or is guilty of any fraudulent, corrupt, or illegal practices in the execution of his office, or knowingly or wilfully, through favour, undercharges or omits to charge, any person, incurs a penalty of 100*l.* for every such offence, and on conviction will be discharged from his office.

Assessors—**Assessors.**—The Assessors are appointed either by
—
veyors of experience. As regards the public, their duties seem to be similar to those of Surveyors.

¹ 5 & 6 Vict. c. 35, s. 38.

² As to these duties, see *post*, pp. 102 *et seq.*

³ The form of the oath is given in Schedule F. of 5 & 6 Vict. c. 35.

⁴ 43 & 44 Vict. c. 19, s. 18.

⁵ As to the certificate of charge, see *post*, p. 193.

⁶ As to the certificate of objection to a supplementary return, see *post*, p. 194.

the General Commissioners, or, in certain cases, by Chap. I.
 other persons. The mode of appointment by the ^{ment by}
 General Commissioners is as follows:—¹ The General ^{General}
 Commissioners for the district, before the 10th April
 in every year, direct their precept to such inhabitants
 of each ² parish within their district, and to such num-
 ber of such inhabitants as they think most convenient,
 to be Assessors for such parish, requiring the persons
 to whom such precept is addressed to appear before
 the General Commissioners of the district at such
 place, and such time, not exceeding ten days after the
 date of the precept, as the Commissioners appoint.
³ Any person to whom such precept is addressed wil-
 fully neglecting, or refusing, to appear before the
 General Commissioners according to the tenour of the
 precept, or appearing, but refusing to submit to be
 appointed Assessor, incurs a penalty of 10*l.* When

¹ 43 & 44 Vict. c. 19, s. 42.

² By the Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 6, the parish for purposes of income tax is made coterminous with the parish for purposes of poor law administration. And if, in the opinion of the Board, any parish is so large that it ought to be divided into districts, with separate Assessors and Collectors, this may be done by the Board with the sanction of the Treasury; and the Board may again, with the like sanction, alter, or annul, such division. After any such division, and whilst it continues, each district of the divided parish is treated as a parish in itself for purposes of income tax. The above-mentioned section is amended by 53 & 54 Vict. c. 8, s. 27, with regard to the Inner Temple, Middle Temple, and Gray's Inn, and the parish of Lambeth.

³ 43 & 44 Vict. c. 19, s. 46.

Chap. I. the inhabitants who have been summoned appear before the General Commissioners, the latter appoint such of them as they think proper to be Assessors for the parish, and give them instructions how they are to make their ¹ certificates and assessments. ² Any person appointed an Assessor by the General Commissioners who wilfully neglects, or refuses, to perform his duty as Assessor, or to charge and assess himself and all other persons chargeable, or to make his assessment according to law, incurs a penalty of 20*l.* ³ The appointment is for the year commencing on the 6th April in each year, and continues until other Assessors are appointed for the same parish. Where an Assessor is continued in office beyond the year for which he is appointed, notice thereof is given him by the General Commissioners, or by the Surveyor; and by such notice the Assessor may be required to attend on a day, and at a place, named in the notice, then and there to receive, and take charge of, all notices and papers to be delivered to him for the due execution of his office. In a parish where two able and sufficient inhabitants cannot be found, the General Commissioners for the district in which the parish is situate nominate and appoint fit persons, residing near such parish, to be Assessors for the parish. If a failure happens in the appointment of an Assessor

¹ As to certificates and assessments of Assessors, see *post*, Chap. III.

² 43 & 44 Vict. c. 19, s. 46.

³ 43 & 44 Vict. c. 19, s. 42.

Chap. I.

for any parish, whereby the assessment of the duties of income tax is likely to be delayed, the magistrates or justices of the peace having jurisdiction in or over such parish, or any two of them, on notice of such default given them by the Surveyor, appoint an Assessor, observing the rules and regulations prescribed for the appointment of Assessors by General Commissioners. ¹Any person appointed an Assessor by the magistrates or justices who wilfully neglects, or refuses, to take upon himself the office, or to perform his duty as Assessor, or to charge and assess himself and all other persons chargeable, or to make his assessment according to law, incurs a penalty of 50*l.* ²In any parish where Assessors are not duly appointed, or being appointed do not take upon themselves the office within the time limited, or where the Assessors for any former year upon whom the duty of Assessors devolves do not take upon themselves the office of Assessors at or before the time limited, the Surveyor of the district in which the parish is situate may execute the duty of Assessor of such parish until Assessors are appointed and take upon themselves the office. In the Metropolis, as defined by the ³Valuation (Metropolis) Act, Assessors

Penalty
for de-
clining
office.

Where in
any parish
Assessors
are not
duly ap-
pointed,
or do not
assume
office.

Appoint-
ment of
Assessors

¹ 43 & 44 Vict. c. 19, s. 46.

² 43 & 44 Vict. c. 19, s. 43.

³ 32 & 33 Vict. c. 67. The term "Metropolis," as used in this Act, means (sects. 3 and 4) unions, and parishes not in union, which are for the time being either wholly, or for the greater part in value thereof, respectively situate within the jurisdiction of the Metropolitan Board of Works, appointed under the Metropolitan Management Act, 1855 (18 & 19

Chap. I. 1869, the General Commissioners do not appoint in "the metropolis."

Vict. c. 120). The jurisdiction of the Metropolitan Board of Works, which has now ceased to exist, having been abolished by the Local Government Act, 1888 (51 & 52 Vict. c. 41), extended over the Metropolis, as defined by sect. 250 of the last-mentioned Act; that is to say, the City of London and the following parishes and places:—

St. Marylebone.	St. Nicholas, Deptford.
St. Pancras.	Greenwich.
Lambeth.	Clapham.
St. George, Hanover-square.	Tooting Graveney.
St. Mary, Islington.	Streatham.
St. Leonard, Shoreditch.	*St. Mary, Battersea (excluding Penge).
Paddington.	Wandsworth.
St. Matthew, Bethnal Green.	Putney (including Roehampton).
St. Mary, Newington, Surrey.	Hackney.
Camberwell.	St. Mary, Stoke Newington.
St. James, Westminster.	St. Giles-in-the-Fields.
St. James, } Clerkenwell.	St. George's, Bloomsbury.
St. John, }	St. Andrew, Holborn-above-Bars.
Chelsea.	St. George-the-Martyr.
St. Mary Abbott, Kensington.	St. Sepulchre, Middlesex.
St. Luke, Middlesex.	Saffron Hill, Hatton Garden, Ely-rents and Ely-place.
St. George-the-Martyr, Southwark.	Glasshouse Yard, The Liberty of.
Bermondsey.	St. Anne, Soho.
St. George-in-the-East.	St. Paul, Covent Garden.
St. Martin-in-the-Fields.	St. John the Baptist.
Mile End Old Town, Hamlet of.	Savoy, or Precinct of the Savoy.
Woolwich.	St. Mary-le-Strand.
Rotherhithe.	St. Clement Danes.
St. John, Hampstead.	Liberty of the Rolls.
St. Mary, Whitechapel.	St. Peter and St. Paul, Hammersmith.
Christchurch, Spitalfields.	Fulham.
St. Botolph Without, Aldgate, Middlesex.	St. Anne, Limehouse.
Holy Trinity, Minories.	St. John, Wapping.
St. Katherine, Precinct of.	St. Paul, Shadwell.
Mile End New Town, Hamlet of.	Ratcliff, Hamlet of.
Norton Folgate, Liberty of.	All Saints', Poplar.
Old Artillery Ground.	St. Mary, Stratford-le-Bow.
Tower, District of.	St. Leonard, Bromley.
St. Margaret, } Westminster.	
St. John, }	
St. Paul, Deptford (including Hatcham).	

Assessors, for the ¹ duties of income tax under Schedules A. and B., upon any property in the Metropolis. Chap. I.

² No person inhabiting any city, borough, or town corporate, can be compelled to be an Assessor for a place outside the limits of such city, borough, or town. No inhabitant of any city, &c. can be compelled to be Assessor for a place outside.

³ Every person appointed an Assessor is required on his appointment, and before he acts, to make the prescribed declaration ; and, ⁴ if he neglects, or refuses to do so, he incurs, if the neglect or refusal follows upon a precept addressed to him by the General Commissioners, a penalty of 10*l.*; if it occurs after appointment by the General Commissioners, a penalty of 20*l.*; and if after appointment by the magistrates or justices, a penalty of 50*l.* ⁵ The remuneration of Assessors is prescribed in the first schedule to the ⁶ Taxes Management Act, 1880. Declaration to be made by Assessors. Remuneration of Assessors. The foregoing are the

Christchurch.	St. Thomas, Southwark.
St. Saviour's (including the Liberty of the Clink).	St. John, Horselydown.
Charlton-next-Woolwich.	The Close of the Collegiate Church of St. Peter.
Plumstead.	The Charterhouse.
Eltham.	Inner Temple.
Lee.	Middle Temple.
Kidbrooke.	Lincoln's Inn.
Lewisham (including Sydenham Chappelry).	Gray's Inn.
*Penge, Hamlet of.	Staple Inn.
St. Olave.	Furnival's Inn.

¹ As to these duties, see *post*, pp. 44, 45, 90, 91.

² 43 & 44 Vict. c. 19, s. 44.

³ 43 & 44 Vict. c. 19, s. 45. The declaration is given in the section referred to.

⁴ 43 & 44 Vict. c. 19, s. 46.

⁵ 43 & 44 Vict. c. 19, s. 47. But see also 48 & 49 Vict. c. 51, s. 25.

⁶ 43 & 44 Vict. c. 19.

Chap. I. general provisions relating to the appointment of Assessors, but special provision for the exercise of the duties of Assessor is sometimes made in the Act granting the duties of income tax for the year.

Special provisions for exercise of duties of Assessors may be made by the Income Tax Act for the year.

Appointment of Collectors.

Nomination.

Collectors.—Collectors are appointed by the Land Tax, and General, Commissioners for each ¹ parish or group of parishes. (² A group of parishes is formed by the Land Tax Commissioners for the district in which the group is situate, with the consent of the Board, for purposes of collection ; and, when the group is formed, it is regarded as one parish for the purposes of collection, but for such purposes only. Where parishes have been grouped, and the grouping proves inconvenient, the Land Tax Commissioners may, with the consent of the Board, dissolve the grouping, either as regards all, or some, or one, of the parishes so grouped.) The mode of appointment of Collectors by the Land Tax and General Commissioners is as follows. ³ The Land Tax Commissioners and the General Commissioners for a district, in the month of April in each year, nominate one or more

¹ As to the income tax parish being coterminous with the poor law parish, and as to the powers of dividing parishes into districts, with separate Assessors and Collectors, see p. 27, note ², ante.

² 43 & 44 Vict. c. 19, s. 72. The powers of "grouping" given to the Board must now be exercised consistently with the provisions of s. 6 of the Revenue Act, 1884 (47 & 48 Vict. c. 62).

³ 43 & 44 Vict. c. 19, s. 73.

able and sufficient person or persons, resident within each parish, or group of parishes, within the district, to the office of Collector of Taxes for such parish, or group of parishes. The fact of the nomination of a person to be Collector must be notified to him, personally, or by a registered letter sent through the general post. Acceptance of the office is not compulsory, but, if the person appointed is unwilling to take the office upon himself, he must within fourteen days after the notification to him of his nomination, either personally or by registered letter addressed to the Clerk to the Commissioners, signify his refusal to accept the office. If he does not give such notice, and fails, when required by the Commissioners, to attend a meeting for the purpose of receiving his appointment and warrant as a Collector, he incurs a penalty of 20*l.* On the expiration of the time limited for declining the office, viz., fourteen days from the date of the notification to the person nominated of his nomination as Collector, the Commissioners proceed to appoint such person or persons as they think fit, who has, or have, been nominated, and not declined the appointment, to be Collector or Collectors for the parish, or group of parishes, for which he or they have been nominated. The fact of the appointment of a person to be Collector must be notified to him, personally, or by registered letter sent through the general post. In any case in which a person nominated as Collector for any parish, or group of parishes, declines office, the Commissioners

Chap. I.
Acceptance of office not compulsory.
Notice must be given if office declined.
Collector's warrant.
Appointment.
Notification of appointment.
Where a person nominated declines office.

Chap. I. may nominate some other able and sufficient person to the office. In the event of there being no able and sufficient person within any parish, or group of parishes, the Commissioners may nominate an able and sufficient person resident in a neighbouring parish, or group of parishes. If the Collector for any parish has not been appointed by the 31st May in any year, the power of appointing a Collector for such parish for that and every subsequent year vests in the Board, and the Board must appoint a Collector accordingly. In the event of the death of a Collector for any parish, or group of parishes, in the course of any year, or before his accounts for such year have been closed, the Board, or the Land Tax, and General, Commissioners, as the case may be, by whom such Collector was appointed, may appoint to the vacant office such person or persons willing to act, as they may think fit. If a vacancy occurring by the death of a Collector is not filled within forty days from the date of death by the Land Tax, and General, Commissioners, where the appointment has to be made by them, the power of filling such vacancy for such year vests in the Board. ¹ The Board may, whenever they think fit, give notice to the Land Tax, and General, Commissioners that they require all, or any, of the persons nominated or appointed Collectors for any parish, or group of parishes, or division, specified in the notice to give security to

If there is no sufficient person within any parish or group.

If Collector for any parish has not been appointed by 31st May in any year.

If a Collector dies in the course of the year.

If vacancy occurring by death not filled within forty days.

The Board may require security to be given by Collectors.

¹ 43 & 44 Vict. c. 19, s. 74.

the satisfaction of the Board for the due collecting, Chap. I.
 accounting for, and paying over, of the moneys
 collected, or to be collected, by such persons re-
 spectively, and for the due performance of their
 duties as Collectors; and the Board may also cause
 the like notice to be given to any person who has
 been appointed Collector. After such notice given by
 the Board to the Commissioners, they may not appoint
 any person to be Collector for any parish, group, or
 division, specified in the notice, unless he has pre-
 viously given security to the satisfaction of the Board;
 and in case any person who has been appointed Col-
 lector, and to whom such notice is given by the Board
 fails to give security within the time limited by the
 notice for that purpose, his nomination, and appoint-
 ment, and authority, as Collector, ceases at the end of
 that time. ¹If after such notice given by the Board there is neglect, or delay, in the appointment of Collectors, who previously have given security to the Crown, or a failure on the part of a person nomi-
 nated, or appointed, Collector to give such security,
 the Board may appoint a Collector, or Collectors, for
 the parish or group of parishes, or division, in which
 such neglect, delay, or failure has occurred. The Appoint-
 ment of appointment by the Board of a Collector is made by Collector
 warrant under their hands; and a person appointed by the Board—
 Collector by the Board has like power and authority how made.
 as a person appointed Collector by the Commissioners.

¹ 43 & 44 Vict. c. 19, s. 76.

Chap. I. The security given on the requirement of the Board is by bond to the Crown, entered into by the Collector with sureties to be approved by the Board, or as the Board determine, and in such sum as the Board require. ¹The Land Tax, and General, Commissioners may also require Collectors on their appointment to give security to their satisfaction ; and any two or more inhabitants of a parish, or group, being respectively charged to the land tax, or income tax, in the assessment for the current year, may, by notice in writing to the respective Commissioners, served personally on, or by registered letter addressed to the Clerk to, the Commissioners, require, that the person whom the Commissioners propose to appoint Collector for the parish, or group, shall give security to the satisfaction of the Commissioners ; and after receipt of such notice the Commissioners may not appoint a person who has not given such security. The security to be given to the Commissioners may be by a joint and several bond, with two sureties at the least, to, and in the names of, any two or more Commissioners ; and the penal sum in any such bond, must, if so required, be equal to the whole land tax, and moneys, assessed in the parish, or group of parishes, and to be collected by the person whom it is proposed to appoint Collector for such parish or group of parishes, and from whom security is required. ²No bond or security given by a Collector

Security
given to
Commissi-
oners—
how to be
given.

Bond
given by

¹ 43 & 44 Vict. c. 19, s. 77.

² 43 & 44 Vict. c. 19, s. 78.

in respect of the collection, accounting for, or remitting, of the land tax, or income tax, duties is liable to stamp duty. ¹No parish is answerable for the acts, neglects, or defaults, of a Collector appointed by the Board, or who gives security to the Crown; nor is a parish liable to be re-assessed for an arrear, or deficiency, of the land tax, or income tax, arising from any default or failure of such Collector; but where the Collector of a parish is not appointed by the Board, or does not give security to the Crown, the parish is answerable for the amount of the land tax, and income tax, and for the same being duly demanded of the persons charged therewith, and for the Collector, or his executors, or administrators, duly paying over the sums received by him to the Collector of Inland Revenue. ²Every Collector before he begins to act in relation to ³the duties in Schedule D. must take the ⁴prescribed oath, which may be administered by a General, or Special, or Additional Commissioner; and every Collector acting in relation to the duties in Schedule D. before he has taken the oath incurs a penalty of 100*l.* There are ⁵other penalties which Collectors incur by various breaches of rule. ⁶The remuneration of the Collectors is fixed

Chap. I.
Collector
not liable
to stamp
duty.
No parish
answer-
able for
defaults of
Collector
appointed
by the
Board or
having
given
security,
but other-
wise is
answer-
able.

Oath to be
taken by
Collector.

Remune-
ration of
Collectors.

¹ 43 & 44 Vict. c. 19, s. 79.

² 5 & 6 Vict. c. 35, s. 38.

³ As to these duties, see *post*, pp. 102 *et seq.*

⁴ The form of the oath is given in Schedule F. of 5 & 6 Vict. c. 35.

⁵ See 43 & 44 Vict. c. 19, s. 121.

⁶ 43 & 44 Vict. c. 19, s. 80. But see also 48 & 49 Vict. c. 51, s. 25.



Chap. I. by the first Schedule of the ¹Taxes Management Act, 1880.

Commissioners and other officers only liable to penalties inflicted by Income Tax Acts.

Limitation of right to sue Commissioners and other officers.

(1) Action must be commenced within six months.

(2) Must be laid where cause of complaint arose.

(3) Must not be commenced within one month after notice in writing.

Actions against Commissioners and Officers.—We may mention here the following provisions. In the first place, ²no Commissioner, Clerk, Surveyor, Assessor, or Collector, acting in the execution of the Acts relating to duties of income tax, is liable for any act done in execution thereof to any penalty other than such as is inflicted by those Acts respectively. In the second place, ³actions or suits brought against a Commissioner, Surveyor, Collector, Assessor, or other person, for anything done in pursuance of the Acts relating to duties of income tax are subject to the following limitations; viz.:—

- (1) The action or suit must be commenced within six ⁴months after the act committed, and
- (2) Must be laid in the county or place where the cause of complaint arose.
- (3) No writ, or process, can be sued out for the commencement of any such action or suit until the expiration of one month after notice in writing specifying (a) the cause of action, (b) the name and place of abode of the intended plaintiff, and of his attorney or agent, if any, has been delivered to, or left at the usual place of abode of, the intended

¹ 43 & 44 Vict. c. 19.

² 43 & 44 Vict. c. 19, s. 19.

³ 43 & 44 Vict. c. 19, s. 20.

⁴ Calendar months. 13 & 14 Vict. c. 21, s. 4.

defendant by the attorney or agent of the intended plaintiff. Chap. I.

On the trial of any such action or suit no evidence may be given of any cause of action other than such as is contained in the notice. The intended defendant to whom any such notice has been delivered may at any time before the expiration of a month after the notice has been delivered to him, or left at his usual place of abode, tender amends to the intended plaintiff, or his attorney or agent; and, if the amends tendered are not accepted, may plead the tender in bar to any action or suit brought against him founded upon such notice. Every action or suit brought against any Collector must be defended by the respective Land Tax Commissioners, or General Commissioners, for the parish, when the Collector has been appointed by them, or has acted under their warrant, or directions; and the costs and charges attending any such action or suit, or any action or suit brought by, or against, the Commissioners, or any Collector appointed by them, for any act done in pursuance of the Acts relating to duties of income tax, are defrayed by an assessment made in a just proportion on the several persons, lands, tenements, and hereditaments liable to be assessed in the parish in, or relating to, which the alleged cause of action has arisen, or for which such Collector has been appointed.

¹All penalties exceeding 20*l.* imposed by virtue of the Recovery of penal-

Chap. I. Acts relating to duties of income tax, excepting¹ such as are directed to be added to the assessments, are recoverable in the High Court, with full costs of suit, and are sued for (except in Scotland and Ireland) by information in the name of the Attorney-General for England, and, in default of prosecution within twelve months of the penalty being incurred, no penalty is afterwards recoverable in any other manner. Subject to the above restriction as to time, all pecuniary penalties not exceeding 20*l.*, and also such of the penalties exceeding 20*l.* as are directed to be added to the assessments, are recoverable before the Land Tax Commissioners, and General Commissioners, respectively, who must take cognizance of the offence in respect of which a penalty may be imposed by them upon information in writing made to them, and upon a summons to the party assessed to appear before them at such time and place as they fix. The Commissioners examine into the matter of fact, and² hear,

Recovery of penalties directed to be added to assessments, and penalties not exceeding 20*l.*

¹ Sect. 185 of 5 & 6 Vict. c. 35, enacts as follows:—“Wherever by this Act any increased rate of duty is imposed as a penalty, or as part of, or in addition to, any penalty, every such penalty and all such increased rate of duty may be added to the assessment, and be collected and levied in like manner as any duties included in such assessments may be collected and levied.”

² The provisions of the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 57, that no barrister, solicitor, or person practising the law, shall be allowed to plead before the General Commissioners on an appeal (see *post*, pp. 275, 276), does not apply to proceedings for penalties under the Acts relating to income tax before the General Commissioners. Bourdin’s Land Tax, 3rd ed. by Bunbury, p. 41, note (*f*).

and determine, the same in a summary way; and on proof made thereof, either by voluntary confession of the party assessed, or by the oath, or solemn affirmation, of one or more credible witness or witnesses, or otherwise as the case may require, give judgment for the penalty, or for such part thereof as they think proper to mitigate the same to, and assess the penalty on the party by way of supplementary assessment. The penalty so assessed is levied in like¹ manner as the duties. The adjudication of the Commissioners is final and conclusive, and there is no appeal from it. The Board, however, may at their discretion mitigate, or stay, or compound, proceedings for any penalty recoverable in the High Court; and may reward any informer who may assist in the recovery of any such penalty. ²All constables, and other peace officers, are required to aid in the execution of the Acts relating to duties of income tax, and to obey and execute such precepts, and warrants, as are directed to them in that behalf by the respective Commissioners. ³If any person wilfully obstructs a Surveyor, Assessor, or Collector in the execution of his office, he incurs a penalty of 50*l.*

Penalty
for ob-
structing
a Sur-
veyor, &c.

Exemption from Stamp Duty.—⁴Receipts, certificates of payment, affidavits, appraisements, and

¹ As to the manner of levying the duties, see *post*, Chap. III.

² 43 & 44 Vict. c. 19, s. 22.

³ 43 & 44 Vict. c. 19, s. 23.

⁴ 5 & 6 Vict. c. 35, s. 179.

Chap. I. valuations, made, or given, in pursuance of, and for the purposes of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), are exempt from stamp duty, as are also ¹ all affidavits and declarations made upon a requisition of the Commissioners of any public Board of Revenue, or of any of the officers acting under any such Board, and all affidavits, and declarations, required by law, and made before any justice of the peace, and all receipts given for, or upon the payment of, any parliamentary taxes or duties.

¹ 33 & 34 Vict. c. 97, Sched. 1.

CHAPTER II.

WHAT IS SUBJECT TO INCOME TAX—THE SCHEDULES.

Upon what the Duty is charged.—Speaking generally, we may say, that ¹everything in the nature of property, which produces, or is capable of producing, or itself consists in, an annual income or revenue, is the subject of the taxation we are considering, if either the property is situate, or the income enjoyed; in the United Kingdom. The titles of the ²Income Tax Acts, 1842 and 1853, as well as of the various Acts which have from time to time continued, and modified, their provisions, speak of duties on *profits*, arising from property, professions, trades, and offices. It is not, however, as we shall see, in all cases necessary that a profit shall actually be made out of property in order that its owner may become liable to the duty.

¹ In the case of *Attorney-General v. Black* (*post*, pp. 120, 121), Martin, B., speaking of the five schedules, and of sect. 100 of the Income Tax Act, 1842, as a net large enough to include every description of property, said, “In fact, the care displayed in embracing every possible source of profit is, I may say, carried to an almost ludicrous extent; it is practically impossible to escape the operation of the Act.”

² 5 & 6 Vict. c. 35, and 16 & 17 Vict. c. 34.

Chap. II. *The Schedules.*—For purposes of classification and distinction, and of applying the provisions of the various Acts relating to the income tax, the several kinds of property, in respect of which the duty is granted, are arranged in “schedules ;” each schedule being marked by one of the five letters of the alphabet, A., B., C., D., and E., and each containing a description of one kind, or class, of property. Rules are given for ascertaining, charging, and levying, the duties with reference to each kind, or class, of property ; but, ¹so far as they are applicable, and not inconsistent with special provisions, they are applicable to the duties in all the schedules.

SECTION I. SCHEDULE A.

Property in Land, &c.—² Under Schedule A. the duty is charged “for and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, for every ³twenty shillings of the annual value thereof.” The word “property,” we may remark, is used in two senses in the ⁴Income Tax Acts, of 1842 and 1853. Sometimes it is used as it is colloquially, and as we have used it above; for instance, after enumerating the subjects of the duties,

¹ 5 & 6 Vict. c. 35, s. 188.

² 16 & 17 Vict. c. 34, s. 2.

³ Fractional parts of 20s. are also charged with duty by sect. 3 of the Act, 16 & 17 Vict. c. 34; but no duty is to be charged of a lower denomination than 1d.

⁴ 5 & 6 Vict. c. 35, and 16 and 17 Vict. c. 34.

the Act of 1853 goes on to say, that they are granted Chap. II. "in respect of the annual profits or gains arising from any kind of *property* whatever ;" but in Schedule A. the word is used to designate the interest in land of the *owner*, as distinguished from that of the *occupier*. The duty charged under Schedule A. is, therefore, a duty which is imposed upon, and has ultimately to be paid by, the owner, and not the occupier, of land. We say "ultimately" because, as will be seen ¹by-and-bye, it is generally paid in the first instance by the occupier, who deducts what he has so paid from the rent he pays to his landlord. A very common name for this duty is "Landlord's Property Tax."

The generality of the words used in describing the extent of the application of the general rule by which the annual value of property chargeable under Schedule A. is determined (see *post*, p. 49, "*Extent of application, &c.*") is not sufficient to destroy the prerogative of the Crown which exempts from taxation property occupied for it. A Scotch case, *Clerk v. Commissioners of Supply for Dumfries* (17 Sco. L. R. 774), had decided that police stations, acquired for the purpose of local government, owned and occupied by the county authorities, were chargeable with income tax. But in *Coomber v. Justices of Berks* (*L. R.* 9 App. 34; 53 L. J. Q. B.

¹ See *post*, pp. 181, 182, 197, 198.

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239 ; 50 L. T. 405 ; 32 W. R. 525), the House of Lords decided that buildings containing Assize Courts, the necessary rooms and offices, and a police station, erected by the justices of a county acting under statutory powers, the buildings in question being erected out of the county rate, and used for purposes of police, that is, for the discharge of functions which of common right belong to the Crown, were exempted from income tax by virtue of the prerogative of property occupied by the Crown. The case of *Clerk v. Commissioners of Supply for Dumfries*, was cited, and disapproved of. It is to be observed that the special case which came before the House of Lords showed that as a matter of fact no profit whatever had been made out of the buildings : whether a surplus revenue could be, or ought to have been, raised by letting the Assize Courts and rooms in the buildings when not in use, was a question of fact not raised by the case, which the House of Lords, having only to decide questions of law raised by the case, expressly abstained from considering.

**Case of
*Adam v.
Maughan***

In the Scotch case of *Adam v. Maughan* (27 Sco. L. R. 64) it was held that a Burgh Court, being a Court for the administration of public justice, the building or rooms in the municipal buildings which were occupied for the administration of justice in that Court were part of the Queen's establishment for the administration of

justice, and were not taxable. But it was held Chap. II. that neither municipal offices nor corporation baths could be exempted on the ground that they yielded no profit, and could be used only for public purposes.

But in the case of a county lunatic asylum, *Case of Bray v. Justices of Lancashire.* established under 16 & 17 Vict. c. 97, and provided for the reception and relief of pauper lunatics, where the medical superintendent, medical officers, and steward, occupied apartments situate in the asylum building, and the chaplain a house within the asylum grounds ; each of these officers being assessed to income tax in amounts exceeding 150*l.* per annum ; the medical superintendent, medical officers, and steward, being bound to be resident in the asylum, and liable at any time to be transferred from one set of rooms to another ; neither the apartments, nor the house, being rated or charged in the poor rate assessment in accordance with sect. 35 of 16 & 17 Vict. c. 97 ; it was held that the apartments and the house were not in the occupation of the Crown, or of persons using them exclusively in and for the service of the Crown, and that they were taxable. In this case the county justices had been assessed in respect of the apartments and the house. A question was raised whether the justices were the proper persons to be assessed, but this question, which Bowen, L. J., charac-

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terised as ridiculously technical, not having been raised before the Commissioners, the Court held that it had no power to entertain it. (*Bray v. Justices of Lancashire*, 22 Q. B. D. 484; 37 W. R. 392; 58 L. J. M. C. 54.)

Annual Value under Schedule A.—It will have been observed, that the duty under Schedule A. is charged “for every twenty shillings of the *annual value*.” Rules are given for ascertaining the annual value of the lands, tenements, hereditaments, and heritages mentioned in Schedule A.

General Rule for ascertaining Annual Value under Schedule A.—First of all, we have a general rule which meets the common case of lands, &c. in the occupation of the owner, or of some one to whom he has let them. We have said already, that the duty under Schedule A. is payable in the first instance by the occupier, whether he be owner or tenant, and this general rule, therefore, meets all cases in which the lands, &c. are “in the occupation of the party to be charged,” except those ¹presently enumerated, for which special rules are given. The general rule is as follows:—²“The annual value of lands, tenements, hereditaments, or heritages, charged under Schedule A. shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of

¹ See *post*, pp. 51 *et seq.*

² 5 & 6 Vict. c. 35, s. 60, No. 1.

such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment: but if the same are not so let at rack-rent, then the rack-rent at which the same are worth to be let by the year.”

Chap. II.

Extent of Application of the foregoing General Rule.

—The foregoing general rule extends to¹ “all lands, tenements, and hereditaments or heritages, capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value,” except those² presently enumerated. But it is in some degree qualified by the following provisions:—

1.³ If an owner of land, &c., whether he is also the occupier or not, pays rates and taxes, which are by law a charge upon the occupier, or any composition for tithes, the annual value is to be estimated exclusively of the amount of such rates and taxes, or composition.

Case of tenant's rates and taxes paid by landlord.

2.⁴ But if a tenant pays rates and taxes which are by law a charge upon the owner, then the annual value is to be the rent, either actually paid or that might be obtained, as the case may be, *plus* the amount of such rates and taxes.

Case of landlord's rates and taxes paid by tenant.

¹ 5 & 6 Vict. c. 35, s. 60, No. 1.

² See *post*, pp. 51 *et seq.*

³ 5 & 6 Vict. c. 35, s. 63, No. 10, r. 1.

⁴ *Ibid.*, No. 10, r. 2.

Chap. II. 3.¹ If the rent reserved depends in whole or in part upon the price of corn or grain, the estimate shall, if possible, be made on the amount payable according to the average prices fixed in the year preceding the year appointed for the payment of the duty, and in the manner by which such rent has usually been ascertained between landlord and tenant.

Case of rent re-served in corn, &c. 4.¹ If the whole, or a part, of the rent is reserved in corn or grain, the estimate shall, if possible, be made on the average price computed on the quantity of corn or grain to be delivered in the year appointed for payment of the duty. Where such computation cannot be made, the estimate may be made on the annual value ascertained according to the General Rule.

Case of rent de-pending on actual produce. 5.² If the amount of rent depends on the actual produce, either in respect of the price, or the quantity, thereof, the estimate shall be made on the amount, or value, of such produce in the year preceding the year appointed for payment of the duty, according to the price fixed, and the quantity produced, for that year, and in the manner by which such rent has usually been ascertained between landlord and tenant. If the price, or the quantity, of produce varies in the two years, the assessment may be rectified upon ³ appeal or surcharge.

¹ 5 & 6 Vict. c. 35, s. 63, No. 10, r. 3.

² *Ibid.*, No. 10, r. 4.

³ As to appeals, see *post*, pp. 274, 275; as to surcharges, see *post*, p. 192.

Exceptions to the foregoing Rule.—The six cases of Chap. II. exceptions to the foregoing general rule which follow agree in this particular, that the profits charged arise from lands, &c., which are not “in the occupation of the party to be charged.” They are governed by the six special rules which follow:—

1.¹ Tithes taken in kind.—The annual value is the average amount for one year of the profits received within the three preceding years. First case of exception : Tithes in kind.

2.² Ecclesiastical dues: that is, “all dues and money payments in right of the Church, or by endowment, or in lieu of tithes (not being tithes arising from lands).” The annual value is estimated by the same rule as is employed in the case of tithes taken in kind. Second case of exception : Ecclesiastical dues.

3.³ Compositions, rents, and money payments, in lieu of tithes, ⁴ other than rent-charges comprised under the Act passed for the commutation of tithes. The annual value is the amount of such composition, Third case of exception : Compositions for tithes.

¹ 5 & 6 Vict. c. 35, s. 60, No. 2, r. 1. But the duty upon tithes may be charged upon the occupier of the lands out of which the tithes arise. See No. 4, r. 4.

² *Ibid.*, No. 2, r. 2.

³ *Ibid.*, No. 2, r. 3.

⁴ “Why this exception was made from this rule we do not know, nor could the Solicitor-General or Mr. Davey enlighten us on the subject.” *Stevens v. Bishop*, 35 W. R. 839. The “annual value” of the rent-charge is not the gross value, but the gross value less such outgoings as are necessary to realize the rent-charge, or, in other words, the “net value or profits.” From the net value or profits the deductions allowed may afterwards be made. *S. C.*

Chap. II. rent, or payment, for one year preceding.¹ Where the owner pays any parochial rates or taxes charged on any such composition, rent, or money payment, the amount so paid by him is to be deducted from the annual value.

Case of
Stevens v.
Bishop.

An owner of tithe rent-charge is entitled to deduct from the gross rent-charge what he necessarily and properly expends, and is compelled to spend, in order to realize his tithe. No reason can be given for the distinction made between tithes in kind, tithes compounded for, and tithes commuted under the Act, 6 & 7 Will. 4, c. 71. Annual value as regards tithes means net, not gross, value. *Stevens v. Bishop*, 19 Q. B. 442; 35 W. R. 839; on appeal, 20 Q. B. D. 442; 36 W. R. 421; 57 L. J., Q. B. 283; 58 L. T. 669; see *post*, p. 184.

Fourth
case of ex-
ception:
Manors
and other
royalties.

4.² Manors and other royalties.—The annual value is the average amount for one year of the profits received within the seven preceding years. The profits referred to in this rule include all dues, and services, and other casual profits, but not rents, or other annual payments.

¹ 5 & 6 Vict. c. 35, s. 60, No. 10, r. 1. A deduction in respect of parochial rates and taxes may also be made in the case of a rent-charge comprised under the Act passed for the commutation of tithes. See *post*, p. 73.

² 5 & 6 Vict. c. 35, s. 60, No. 2, r. 4. Costs of collection may not be deducted. *Duke of Norfolk v. Lamarque*, 24 Q. B. D. 548; 38 W. R. 382; 59 L. J., Q. B. 119; 62 L. T. 153.

5.¹ Fines upon demise of lands or tenements.— **Chap. II.**
 The annual value is the amount received within the ^{Fifth case} year preceding. If the person chargeable proves to <sup>of ex-
ception :
Fines.</sup> the satisfaction of the General Commissioners of the district that such fines, or any part thereof, have been applied as productive capital, on which a profit has arisen, or will arise, otherwise chargeable to income tax for the year in which the assessment is made, the General Commissioners may discharge the amount so applied from the profits liable to assessment under this rule.

6.² Other profits of the same kind: that is, profits ^{Sixth case} that arise from lands, &c., not in the occupation of <sup>of ex-
ception :
Other
profits of
same kind.</sup> the party to be charged, and not before enumerated. The annual value is the average amount for one year of the profits received within such a number of years preceding as the Commissioners judge proper.

³In all cases to which the special rules above stated apply, if the possession, or interest, of the party to be charged has commenced within the time for which the average by which the annual value is to be estimated is directed to be taken, then the profits of one year are to be estimated in proportion to the profits received within the time which has elapsed since the commencement of the possession, or interest, of the party to be charged.

¹ 5 & 6 Vict. c. 35, s. 60, No. 2, r. 5.

² *Ibid.*, No. 2, r. 6.

³ *Ibid.*, No. 4, r. 6.

Chap. II. Further Exceptions to the foregoing General Rule.—

In the cases of the “lands, tenements, hereditaments, or heritages,” enumerated below, the foregoing general rule is replaced by the special rules which follow,¹ and by the ²rules prescribed by Schedule D., which apply so far as they are not inconsistent with these special rules:—

**First
special
rule:
Quarries.**

1.³ Quarries of stone, slate, limestone, or chalk. The annual value is the average amount for one year of the profits received in the preceding year.

**Case of
Jones v.
Cwmorthen
Slate Co.**

The statute is imposing a tax upon that which is worked, not upon the mode of working it. Works for getting slate, although carried on underground, and so that they would ordinarily be described as a mine, rather than as a quarry, are, nevertheless, within the expression “quarries,” as it is here used. *Jones v. Cwmorthen Slate Co.*, L. R., 5 Ex. D. 93; 49 L. J., Ex. 210; 41 L. T. 575; 28 W. R. 237. As to the intention with

¹ 5 & 6 Vict. c. 35, s. 60, No. 3; 29 & 30 Vict. c. 36, s. 8. The effect of this latter enactment is not to transfer cases in Schedule A. (No. 3) to Schedule D., so as to change the respective times for which the profits are to be assessed. But mines, for instance, are, by this enactment to be charged and assessed according to the rules prescribed by Schedule D. so far as those rules are consistent with No. 3 of Schedule A. *Coltness Iron Co. v. Black*, L. R., 6 App. 315; 51 L. J., Q. B. 626; 45 L. T. 145; 29 W. R. 717. Railway Companies, however, now pay income tax under Schedule D., *post*, p. 60, note¹.

² As to these rules, see *post*, Chap. II., sect. 4.

³ 5 & 6 Vict. c. 35, s. 60, No. 3, r. 1.

which the words "quarries" and "mines" (see Chap. II.
 below) are used in the Act, and the reason for Reason
 the difference of treatment established between for differ-
 the two concerns, Brett, L. J., in this case said : ence of
 treatment between
 "I apprehend, that the true intent of using the "quar-
 words 'quarries' and 'mines' is only to fix the ries" and
 place at which the tax is to be imposed, or, in "mines."
 other words, the persons upon whom the tax is to be imposed ; that is to say, those who are obtaining the profits of certain produce are to be taxed in one way, and those who are obtaining the profits of certain other produce are to be taxed in another way ; and I should think myself that the reason of the difference of average is on account of the mercantile difference between the sales of the different kinds of produce. It is to be noticed that the tax is upon profits. That implies a sale, and deduction of expenses ; and the difference of average probably is to be accounted for in this way, that it is well known that the profits on those matters which are in the *first class* are tolerably uniform ; whereas it is equally well known that the profits in the *second class* are exceedingly varying from year to year."

2.¹ Mines of coal, tin, lead, copper, mundic, iron and other mines, except ²alum mines. The annual value is the average amount for one year of the

Second special rule:
 Mines (except alum mines)

¹ 5 & 6 Vict. c. 35, s. 60, No. 3, r. 2.

² As to alum mines, see below.

Chap. II. profits received in the five preceding years. But,¹ if any mine has decreased, or is decreasing in annual value, so that the average of five years will not give a fair estimate of its annual value, the Commissioners may take the actual amount of the profits in the preceding year to be the annual value.

Case of
*Jones v.
Cwmorthen
Slate Co.*

The expression "other mines" means mines *eiusdem generis* with those before mentioned. It clearly does not mean *all* other mines, because there is special mention afterwards of "alum mines." *Jones v. Cwmorthen Slate Co.*, L. R., 5 Ex. D. 93; 49 L. J., Ex. 210; 41 L. T. 575; 28 W. R. 237.

Case of
*Addie &
Sons v.
Solicitor
of Inland
Revenue.*

Addie and Sons, who were coal and iron masters, claimed to deduct from the sum in which they had been assessed a percentage for pit sinking, on the ground that the expenditure which such percentage would represent was part of the annual expenditure necessarily incurred in realising the profits of their trade. It was held that expenditure for pit sinking was an expenditure of capital, and that the deduction claimed could not be allowed. *Addie and Sons v. Solicitor of Inland Revenue*, 12 Sco. L. R. 274. In *Coltness Iron Co. v. Black* (L. R., 6 App. 315; 51 L. J., Q. B. 626; 45 L. T. 145; 29 W. R. 717), however, Blackburn, L. J., commenting upon the foregoing case of *Addie and Sons v. Solicitor of*

Pit sink-
ing, ex-
penditure
for.

Case of
*Coltness
Iron Co.
v. Black.*

¹ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 5.

Inland Revenue, said, “I see that in *Addie and Sons v. Solicitor of Inland Revenue*, reliance is placed on the judgment of the Lord President, on the third rule as to concerns under the first case of Schedule D., that no deduction is to be made ‘for any sum intended to be employed as capital.’ But I do not think reliance can be placed on this. If, from the nature of the concerns in No. 3, an allowance ought to be made for capital, then this rule should be rejected as inconsistent with No. 3. If no such deduction should be made, the rule is not required.” In *Coltness Iron Co. v. Black*, it was decided, not¹ that a mine owner will not in any case be entitled to an allowance in respect of the cost of sinking a pit, by means of which pit the minerals are gotten, which are the source of profit for the year in which the pit is sunk—a point which was not involved—but that a mine owner cannot write off, and deduct, from the gross earnings of his mine in a particular year, a sum to represent that year’s depreciation of all his pits wherever sunk.

The Broughton and Plas Power Coal Company were lessees of certain collieries which they

Case of
Broughton
& Plas.

¹ See, however, what was said by Grove, J., in the case of *Gillatt and Watts v. Colquhoun*, *post*, p. 125, note³. The case of *Coltness Iron Company v. Black* overruled the case of *Knowles v. M'Adam*, L. R., 3 Ex. D. 23; 47 L. J., Ex. 139; 37 L. T. 795; 26 W. R. 114.

Chap. II.

*Power Coal
Co. v.
Kirk-
patrick.*

commenced working in October, 1880. By the agreement under which they held the collieries the lease was to commence from the 25th March, 1874, and to continue for forty-two years. The dead rent was to be 1,000*l.* a year for the first three years, 2,000*l.* a year for the next seven years, and 3,000*l.* a year for the residue of the term, to be repayable out of royalties during the first sixteen years, and afterwards the deficiency in any year was to be recouped out of the excess of any of the next five years. The dead rent and the royalty were actually one and the same payment, and were merged together, the dead rent being a device to secure the lessor against the fluctuations of mining, whereby the lessor received, on account of his share of the profits of the company, not less than a certain annual sum; so that, when the lessor's share of the royalties did not amount to that sum, he received that sum, but, when his share of the royalties exceeded the fixed annual sum, the fixed sum only was paid to him until the company had been reimbursed the excess previously paid to the lessor when his share of the profits did not amount to the fixed sum. For the years 1878, 1879, and 1880, 2,000*l.* each year was assessed to the income tax, as the mine was not working. For the year 1881-1882 the royalties amounted to 3,477*l.* The company claimed that a sum of 1,477*l.* in the assessment for 1881-1882 should

be allowed from that assessment, on the ground ^{Chap. II.} that it had already borne income tax when it was previously paid to the lessor. It was held that income tax must be paid upon the £1,477.¹ Income tax had been paid upon that sum, but by the landlord, *not* by the tenant, the company. The company had paid no income tax, making no profits. When the mine began to be a profitable concern, the company could not deduct past losses, and the fact that they had made a bargain with a third party made no difference. The case of the *Coltness Iron Company v. Black* (*ubi sup.*) was held to be in point, and the present case was distinguished from the case of *Last v. London Assurance Corporation*,² as it had then been decided by the Court of Appeal (*post*, pp. 137—142). *Broughton and Plas Power Coal Company v. Kirkpatrick*, 14 Q. B. D. 491; 54 L. J., Q. B. 268; 33 W. R. 278.

3. ³Iron works, ⁴gasworks, salt springs, alum Third
special
rule:

¹ That income tax has been already paid upon a particular sum is, therefore, of itself no reason why such sum should not be charged, unless the previous payment of income tax was made by the person whom it is sought to charge.

² The appeal to the House of Lords, which resulted in the reversal of the judgment of the Court of Appeal, had not then been carried through.

³ 5 & 6 Vict. c. 35, s. 60, No. 3, r. 3.

⁴ The gasworks intended are gasworks in England. Profits derived from gasworks on the Continent of Europe or in the Colonies are chargeable under Schedule D. *The Imperial Continental Gas Association v. Nicholson*, 37 L. T., N. S. 717.

Chap. II. mines or works, waterworks, streams of water, canals, inland navigations, docks, drains, and levels, fishings, rights of markets and fairs, tolls, ¹railways and other ways, bridges, ferries and other concerns of the like nature. The annual value of these concerns is the profits of the year preceding.

**Iron
works,
&c.; alum
mines,
water
works,
&c.;
fishings,
rights of
market,
&c.; rail-
ways, &c.;
bridges,
&c.** In making the assessment upon any of the above-mentioned concerns chargeable by reference to the rules of Schedule D., the Commissioners ²must allow

**Deduction
for wear
and tear of
machinery.** such deduction as they may think just and reasonable, as representing the diminished value by reason

of wear and tear during the year of any machinery or plant, used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on; and where machinery or plant is let to the person or company by whom the concern is carried on, upon such terms, that the person or company is bound to maintain the machinery or plant, and to deliver over the same in good condition at the end of the term of the lease, the machinery or plant is deemed to belong to such person or company.

Case of
Mersey

The Mersey Docks and Harbour Board were

¹ The annual value, profits, or gains of any railway, are charged and assessed by the Special Commissioners. 29 & 30 Vict. c. 36, s. 8, *post*, p. 172. And by sect. 95 of the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), railway companies are to pay income tax under Schedule D.

² 41 & 42 Vict. c. 15, s. 12. As to claims for repayment of part of the sum assessed by the lessor where the burden of maintaining machinery falls upon him, see *post*, p. 75.

constituted by Act of Parliament a corporation **Chap. II.** for the management of the Mersey Dock Estate. *Docks and Harbour Board v. Lucas.* Under the Act the surplus revenue of the Board was to be applied in a particular manner for the reduction of debt, and not otherwise. It was held that this surplus was liable to income tax. *Mersey Docks and Harbour Board v. Lucas*, 8 App. 891; 53 L. J., Q. B. 4; 49 L. T. 781; 32 W. R. 34. See further, as to concerns of the kinds above enumerated, post, Chap. II., sect. 4.

The Glasgow Corporation Water Commissioners were empowered by Act of Parliament **Case of Glasgow Corporation Water-works.** to obtain a supply of water for the city of Glasgow and its suburbs. They were authorized to acquire, and had acquired, by purchase, the works of certain previously-existing water companies. They were required by compulsory clauses in their Act to supply water within the municipal boundaries of the city of Glasgow, and outside those boundaries to the suburbs within a prescribed area. They were authorized to borrow money by annuities, mortgage, and otherwise, which was to be applied in defraying the expense of purchasing and acquiring lands and other property, and in executing the authorized works. Householders within the municipal boundaries were rated compulsorily under the authority of the Act for the water supply, whether they took the water supplied or not; outside those boundaries only those who took

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the water paid for it. The rates compulsorily levied, and the voluntary payments for the water supplied were fixed, within certain prescribed limits of charge, at values sufficient to provide a sum to cover all annual expenses, and in addition a sum not less than one per cent. on the money borrowed, to be applied as a sinking fund applicable to the redemption of mortgages and annuities. Any surplus there might be in any one year went to reduce the domestic water rate in the next year. It was held that the sum applied towards the formation of the sinking fund, and the balance carried forward to the reduction of the water rate, was not assessable for income tax. *In re Glasgow Corporation Waterworks*, 12 Sco. L. R. 466. The difference between this case and the case of the Brighton Corporation (see *post*, *Attorney-General v. Black*, pp. 120, 121) was that in this case the citizens of Glasgow, through the Water Corporation as their representatives, assessed themselves for the purpose of obtaining a water supply, not with a view of making any profit by the undertaking; while the Brighton Corporation made a profit out of a tax levied upon the lieges generally, and applied the proceeds of that tax for the benefit of the community which they represented. It should be observed that no attempt was made in the case of the Glasgow Corporation to discriminate between that portion of the

revenue which arose from the rates levied within the municipal boundaries—the limits of compulsory supply—and that portion of the revenue which was raised beyond those limits.

But when the Water Commissioners were assessed upon the principle of taking the total amount of the receipts, and deducting from that amount all expenses necessarily incurred in carrying on the concern, and maintaining and repairing the property, but not the annuities or interest payable upon the debt, except ^{Case of Glasgow Corporation Water Commissioners v. Miller.}¹ such proportion thereof as was payable out of the compulsory rates levied from occupiers of dwelling-houses and owners of property within the limits of compulsory supply, a clear distinction being thus drawn between revenue derived from the compulsory rates levied within the municipal boundaries, and that derived from the sale of water for trading purposes, and non-compulsory rates levied from persons and properties beyond those boundaries, and the sum charged thus representing the surplus revenue derived from the supply of water outside the limits of compulsory supply, and from the supply of water within those limits ²for purposes of trade,

¹ This proportion, however, being chargeable under sect. 102 of 5 & 6 Vict. c. 102. See *post*, pp. 157, 158, 249.

² The water supplied within the “limits of compulsory supply,” for purposes of trade, manufacture, &c., was paid for at such rates and upon such terms as the Water Commissioners might fix, not by compulsory rates.

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Case of
*Allan v.
 Hamilton
 Water-
 works
 Commis-
 sioners.*

manufacture, &c., exclusive of the compulsory rates levied within the limits of compulsory supply, the assessment was upheld. *Glasgow Corporation Water Commissioners v. Miller*, 23 Sco. L. R. 285. And where the Hamilton Waterworks Commissioners, who had powers somewhat similar to those of the Glasgow Corporation Water Commissioners, supplied Hamilton Barracks, belonging to the Government, situated within the boundaries of the burgh, under a section of the local Act which enabled the Waterworks Commissioners to supply any corporation, or company, or person, with water for other than domestic use, at such rates, and upon such terms and conditions as should be agreed upon, it was held that, whether or not the Crown, or whoever represented Hamilton Barracks, were entitled to demand a supply of water, and to be assessed only at the domestic rate, inasmuch as the barracks were in fact supplied upon other terms and conditions, fixed by agreement, the profit made by so supplying the barracks with water was chargeable with income tax. *Allan v. Hamilton Waterworks Commissioners*, 24 Sco. L. R. 360.

Case of
*Mayor,
 &c. of
 Dublin v.
 M'Adam.*

By a private Act, the Corporation of Dublin had power to construct waterworks for the borough, and for certain extra-municipal districts, and, for the purposes of the Act, to borrow money on security of the rates, and to

levy water rates on owners and occupiers within *Chap. II.*
the borough, and to contract with owners and
occupiers in extra-municipal districts for the
supply of water. By a later Act, the income
from the supply of the extra-municipal districts
was to form a consolidated fund, available for
paying loans and interest, and for all the pur-
poses of the Act. It was held that the excess
of income over expenditure in respect of the
extra-municipal districts was chargeable with
income tax. *Mayor, &c. of Dublin v. M'Adam,*
20 L. R., Ir. 497.

The Glasgow Gas Commissioners were em- *Case of
Glasgow
Gas Com-
missioners.*
powered by Act of Parliament to purchase the
undertakings of two gas companies previously
authorized by Act of Parliament to supply
Glasgow with gas. The price was to be paid
by way of annuity to the shareholders in the
previously-existing gas companies. The Gas
Commissioners were empowered to manufacture
and sell gas to the inhabitants of Glasgow and
suburbs, and it was provided that a sinking
fund should be formed to pay off the expenses
incurred in erecting works and setting the
concern going. It was held that the Commis-
sioners were liable to assessment in respect of
the profits of their gasworks; and that their
case differed from that of the Waterworks
Corporation, inasmuch as they had no authority
to levy a rate, and were not bound to apply any

Chap. II.

profits they might make in reduction of the charge for gas, but might apply it for their own purposes and uses. They had all the attributes of a trading corporation; and it is not necessary that profits should be for the benefit of individuals in order that they may become liable to assessment for income tax. Case of *Glasgow Gas Commissioners*, 13 Sco. L. R. 556.

Case of
*Dillon v.
Corpora-
tion of
Haver-
fordwest.*

So the Corporation of Haverfordwest, who, by their private Act of Parliament, acquired the power to light the streets of the town with gas, the charges of which were defrayed by a rate levied annually upon the occupiers of all dwelling-houses and other buildings within the district, not exceeding one shilling in the pound, and, after sufficiently lighting the streets, to supply any persons who were willing to buy their gas, and to receive payment for it, provided that all money to arise therefrom should be, in the first instance, applied towards defraying the expenses of the gas apparatus and other things connected therewith, and that, if there should be any overplus, the same should be applied generally for the purposes of the Act, were held to be chargeable upon the profit made upon the gas which they sold to customers on the private account. They claimed to be allowed to deduct the expense incurred in lighting the public lamps, on the ground that, though it was an expense

incurred by the Corporation in the discharge of **Chap. II.**
their public duties, yet it was wholly and ex-
clusively laid out for the purposes of the trade
of the Corporation, for by sect. 56 of the private
Act a private customer could not be supplied
unless this expense was incurred, inasmuch as it
was only after they had sufficiently lighted the
streets that the Corporation might sell gas to
private customers. But it was held that they
were not entitled to the deduction, because the
expenditure was not an expenditure for the pur-
poses of the trade, which was a trade for supply-
ing private customers only, but was for the
purpose of enabling the Corporation to enter
upon that trade, and the deduction allowed for
money wholly and exclusively expended for the
purposes of a trade (¹5 & 6 Vict. c. 35, s. 100,
first rule applying to first and second cases) does
not include initial expenditure incurred by a
person to enable him to enter a particular trade.
Dillon v. Corporation of Haverfordwest, [1891] 1
Q. B. 575; 39 W. R. 478; 60 L. J., Q. B. 477;
64 L. T. 202.

The Edinburgh Southern Cemetery Co. were Case of
Edinburgh
Southern
Cemetery
Co. v.
Kinmont. in the habit of selling the use in perpetuity of
grave spaces in their cemetery, to be used for
burial purposes only. A certain portion of the
sum realised during each year by the sale of

¹ See *post*, p. 127.

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these grave spaces was set apart to form a fund for the replacement of the money expended in the purchase of the land occupied by the cemetery. It was held that the yearly receipts for the sale of grave spaces constituted income, and that no deduction could be allowed for so much of those receipts as was paid to the fund for replacing capital. The Company had been assessed under¹ Schedule A., No. II., Rule 6, of the² Income Tax Act, 1842, and the rules applicable to the³ first and second cases of Schedule D., applied under authority of⁴ section 188 of the Income Tax Act, 1842, but it was held that this was a mistake, and that the Company, being in occupation of the cemetery, could not be assessed under a rule applicable only⁵ where the land which is the subject of charge is not in the occupation of the party to be charged, but that they should be assessed under⁶ No. 3 of Schedule A., Rule 3, their business falling very fairly within the words "other concerns of a like nature." *Edinburgh Southern Cemetery Co. v. Kinmont*, 17 Sess. Cas., 4th series, 154.

¹ See *ante*, p. 53.

² 5 & 6 Vict. c. 35.

³ See *post*, pp. 124 *et seq.*

⁴ 5 & 6 Vict. c. 35, s. 188, see *ante*, p. 44.

⁵ See *ante*, p. 53.

⁶ See *ante*, pp. 59, 60.

The Portobello Town Council were required **Chap. II.** by Act of Parliament to provide a burial ground. They were empowered to assess the ratepayers and to mortgage the assessment, and in this way they borrowed the money with which they acquired and constructed the cemetery. The receipts from the cemetery exceeded the working expenses, but the borrowed money had to be repaid by instalments, and interest had to be paid on the undischarged capital debt. It was contended that the case differed from that of the Edinburgh Southern Cemetery (*ubi sup.*), inasmuch as that was a commercial company trading for profit to the shareholders, while the Town Council were acting without regard to profit, under compulsion of an Act of Parliament, which required them to provide a public burial ground, and to assess the ratepayers for that purpose, and until they attained the position of not requiring to assess there could be no pecuniary benefit. It was also contended that the case differed from that of the Paddington Burial Board (*post*, pp. 121, 122), inasmuch as in that case the money borrowed for the purchase of the ground had been repaid, so that, it was held, the cemetery was carried on for the benefit of the ratepayers. But it was held that the whole of the profit, without deducting the interest paid upon the borrowed capital, was liable to income

Case of
Portobello
Town
Council
v. Sulley.

Chap. II.

tax. Portobello Town Council v. Sulley, 27 Sco. L. R. 863.

Case of
Highland
Railway
Company
v. Special
Commissioners of
Income
Tax.

Profits of
a business
in the year
preceding
the year of
assessment
may form
the basis
of assess-
ment,
though a
part of the
business
has been
discon-
tinued in
the year
of assess-
ment.

The Highland Railway Company were empowered to provide and use steam and other vessels. Finding that they had been running certain lines of steamships at a loss, they discontinued them. The traffic of one of these lines of steamships was undertaken by an owner of steamships under an agreement with the company; the traffic of the other line was undertaken by a shipping company entirely on their own account, and without any agreement with the Railway Company. The Railway Company made up their account for income tax of the profits of the year preceding that of assessment. During the year of assessment and the preceding year the agreement made by the Railway Company, which provided for the traffic formerly carried on by one of their lines of steamers, was in force. During a part of the year preceding the year of assessment the Railway Company had run the other of their lines of steamers, but in the latter part of the year they had abandoned this line, the traffic of which was undertaken, as has been said, by an independent shipping company. The Railway Company claimed to deduct the loss sustained by them in the year preceding the year of assessment upon the line of steamers which they had con-

tinued to run during a part of that year. It Chap. II.
was objected that they were not entitled to do
this, because during the year of assessment the
running of steamers had in fact formed no part
of the undertaking of the railway company, and
the basis of assessment must be determined by
the character of the undertaking during the
year of assessment. But it was held that the
Railway Company had not, by discontinuing a
part of their business, changed the character of
their undertaking, and that, the assessment
having to be made upon the profits of the year
preceding the year of assessment, the profits of
that year must be taken as they actually stood,
and that the Railway Company were entitled to
the deduction which they claimed. Had they
changed the character of their undertaking, the
undertaking would not have been the same in
the year of assessment that it was in the pre-
ceding year, but a different undertaking, and
then the profits of the preceding year would not
have formed the basis of assessment. *Highland
Railway Company v. Special Commissioners of
Income Tax*, 23 Sco. L. R. 116.

¹In all cases to which the special rules above stated apply, if the possession, or interest, of the party to be charged has commenced within the time for which the average by which the annual value is to be

Chap. II. estimated is directed to be taken, then the profits of one year are to be estimated in proportion to the profits received within the time which has elapsed since the commencement of the possession, or interest, of the party to be charged.

Deductions and Allowances.—It is further necessary, in order to arrive at the annual value of any property chargeable to the duty under Schedule A., to have regard to the deductions and allowances which it is permitted to make. ¹No deductions, except such as are specified, are allowed; and those, only if claimed in ²the prescribed manner. ³The deduction or allowance (the two names seem to be used interchangeably) is of a sum equal to the duty at the rate per 20s. in force for the time being upon the sums paid in respect of which the deduction or allowance is granted; and it is not granted if such sums are paid by a tenant. The following are the deductions or allowances which may be granted if claimed:—

1. Deduction allowed for tenths, &c.

1. ⁴Tenths, &c. The amount of the tenths and first-fruits, duties and fees, on presentations, paid by any ecclesiastical person within the year preceding that in which the assessment is made.

¹ 5 & 6 Vict. c. 35, s. 159. See *post*, p. 155, as to the deduction allowed to a clergyman, or minister of any religious denomination, for expenses incurred in the performance of his duty or function.

² As to the mode of claiming the deduction or allowance, see *post*, Chap. IV., sect. 1.

³ 5 & 6 Vict. c. 35, s. 60, No. 5.

Ibid, No. 5, first deduction.

2. ¹ Procurations, &c. For procurations and synodals paid by ecclesiastical persons, on an average of seven years preceding that in which the assessment is made.

2. Deduction allowed for procurations, &c.

3. ² Repairs of chancels, &c. The amount expended in repairs of collegiate churches and chapels, and chancels of churches, or of any college or hall in any of the universities of Great Britain, by any person bound to repair the same, in the year preceding that in which the assessment is made.

3. Deduction allowed for repairs of chancels, &c.

4. ³ Parochial rates on tithe rent-charge. The amount of parochial rates, taxes, and assessments, upon any rent-charge confirmed under the Act passed for the commutation of tithes, paid in the year in which the assessment is made.

4. Deduction allowed for parochial rates on tithe rent-charge, &c.

5. ⁴ Land tax. The amount of land tax unredeemed charged upon any lands, &c.

5. Deduction allowed for land tax.

6. Drainage rates, &c. ⁵ The amount charged on lands, &c., by a public rate or assessment in respect of draining, fencing, or embanking, the same. ⁶ A deduction is allowed in respect of the amount expended by the owner on an average of the twenty-one preceding years in making or repairing sea walls, or other

6. Deduction allowed for drainage, &c., sea walls, &c.

¹ 5 & 6 Vict. c. 35, s. 60, No. 5, second deduction; 16 & 17 Vict. c. 34, s. 34.

² *Ibid.*, No. 5, third deduction.

³ *Ibid.*, No. 5, fourth deduction.

⁴ *Ibid.*, No. 5, fifth deduction.

⁵ *Ibid.*, No. 5, sixth deduction. This would appear not to allow a deduction in case of a private drainage act.

⁶ 16 & 17 Vict. c. 34, s. 37.

Chap. II. embankments necessary for the ¹protection of land against the encroachment or overflowing of the sea, or any tidal river, although the sums expended have not been charged upon such land by any public rate or assessment.

Case of
Hesketh v. Bray.

Where land, open to a tidal river, and liable to be more or less flooded at every tide, but covered with short herbage, and worth as pasture 5s. to 10s. an acre, and so assessed to poor rate and income tax, was reclaimed by the construction of an embankment, with provision of drainage, and for access by roads, so as to be worth from 3*l.* to 3*l.* 10s. an acre, it was held that no allowance or deduction could be made or allowed for the amount expended in making the embankment. The object of the works was not protection, but the increase of the capital value of the land, by a change of the character of the land. If, in the course of time, a further expenditure should be incurred for the purpose of preserving and protecting the land in its new condition, an exemption claimed on that further expenditure would in all probability be allowed. *Hesketh v. Bray*, 20 Q. B. D. 589; 35 W. R. 622; 57 L. J., Q. B. 184; 58 L. T. 313. The

¹ "Protection," not "reclamation," see *Hesketh v. Bray*, 20 Q. B. D. 589; 36 W. R. 622; 57 L. J., Q. B. 184; 58 L. T. 313. Affirmed on appeal, 21 Q. B. D. 445; 37 W. R. 22; 57 L. J., Q. B. 633.

judgment was affirmed on appeal, 21 Q. B. D. **Chap. II.**
445; 37 W. R. 22; 57 L. J., Q. B. 633.

7. Wear and tear of machinery. We have¹ already mentioned the deduction allowed for wear and tear of machinery to the person or company by whom the concern in which the machinery is used is carried on.
²If the machinery or plant is let upon such terms that the burden of maintaining and restoring the same falls upon the lessor, he may claim repayment of so much of the duty charged in respect of the machinery or plant, and deducted by the lessee on payment of rent, as represents the income tax upon such an amount as the Commissioners think just and reasonable as representing the diminished value of the machinery by wear and tear. The mode in which the claim is made will be explained³ later on.

Allowances for certain Public and Charitable Institutions.—The following allowances⁴ are also directed to be made:—

1. Colleges and halls in universities. For the duties charged on any college, or hall, in any of the universities of Great Britain, in respect of the public buildings, and offices, belonging to such college or hall and not occupied by any individual member thereof, or by any person paying rent for the same;

¹ *Ante*, p. 60.

² 41 & 42 Vict. c. 15, s. 12.

³ See *post*, pp. 295, 296.

⁴ 5 & 6 Vict. c. 35, s. 61, No. 6.

Chap. II. and for the repairs of the public buildings, and offices, of such college or hall; and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of such college or hall.

2. Allowance for hospitals, &c. 2. Hospitals, &c. For the duties charged on any hospital, public school, or almshouse, in respect of its public buildings, offices, and premises, not occupied by any officer thereof whose income amounts to, or exceeds, 150*l.*, or by any person paying rent for the same; and for the repairs of such hospital, public school, or almshouse, and offices; and of the gardens, walks, and grounds, repaired and maintained by its funds.

*Case of
Blake v.
Lord
Mayor, &c.
of London.*

The exemption is not limited to charitable institutions. A hospital would not be the less entitled to the benefit of this rule because it had taken certain fees from its patients (*per Denman, J., in Blake v. Lord Mayor, &c. of London, infra*). The City of London School is a school maintained by the Corporation of the City of London. Certain payments are made by the scholars, but no profit is made by the Corporation, but on the contrary a yearly deficiency of income to meet expenditure is made up by the Corporation out of their own moneys. It was contended that the term "public school" was limited by prior statutes, *i.e.*, 43 Geo. 3, c. 122; 46 Geo. 3, c. 65; and 48 Geo. 3, c. 55, to schools which are supported by charity funds or endowments, and that if the scholars paid anything the school

ceased to be a "public school." Mr. Justice Chap. II. Denman said that the words "public schools" were not to be construed as words of art, but meant "schools which are in their nature public." He added that the school in question was in some sense a charitable institution, but that it was not necessary to show that it was a charitable institution in order to establish its claim to exemption. On appeal the decision of the Court below was upheld. But all the judges in the Court of Appeal took note of the charitable element in the school. Lord Esher, M. R., founded his judgment on the facts that (1) the school was partially maintained by a donation in its origin voluntary and charitable; (2) the object of the foundation was a public object, and therefore the school was of the same nature as one of the colleges or halls in the universities, which were also subjects of exemption; and said that the mere fact that some money was paid by those who were interested in the education of the boys did not prevent the school being a public school within the meaning of the Act where those circumstances existed. Fry, L. J., said that all the exemptions must be construed in the light of each other, and that "public school" must be read not only with hospitals or almshouses, but also with "colleges or halls of any of the universities." He said that it would be unwise to attempt to lay down any definition

Chap. II.

of a public school, but that there were certain notes of a public school which the school in question had. (1) It was a public foundation; (2) a portion of its income was charitable; (3) it was managed by a public body; (4) no private person had any interest in the school; and (5) no profit was in contemplation in carrying it on. Lopes, L. J., said that the legislature did not intend by the words "public school" only a pure charity school. It intended to relieve from taxation schools where a sufficiently large number of the public received their education gratis, or mainly gratis. That was not an exhaustive definition of the term "public school," but the City of London School came within it. *Blake v. Lord Mayor, &c. of London*, 18 Q. B. D. 437; 35 W. R. 212; on appeal, 19 Q. B. D. 79; 35 W. R. 791; 56 L. J., Q. B. 424.

Case of *St. Andrew's Hospital v. Shear-smith.*

Where a hospital for the treatment of persons suffering from mental diseases was conducted on the principle of the richer patients paying sums above what their treatment and maintenance cost, to enable poor patients to be also treated, so that from the payments so made by the richer patients there was an excess of 7,000*l.* over the ordinary expenditure, which was applied in extending and improving the hospital, so as to make it more fit for the purpose for which it was intended, it was held that the excess was profit, and assessable to income tax.

St. Andrew's Hospital v. Shearsmith, L. R. 19 Chap. II.
Q. B. D. 624; 35 W. R. 811.

And where a hospital of a similar kind was conducted on similar principles, with the result that there was an annual surplus which was expended in enlarging, improving, and otherwise better adapting the institution for its work, it was held not entitled to exemption from the duties charged on profits by the Income Tax Acts. *Needham v. Bowers*, 21 Q. B. D. 436; 37 W. R. 125.

But the question in these cases is not whether an institution may flourish for a few years by reason of taking fees, nor whether in any particular year it receives payments which enable it to pay its way, but, What is the character of the institution itself? Is its eleemosynary character blotted out, or does it still exist? The Lunatic Hospital, Nottingham, was a building provided for the reception and relief of lunatics who were not paupers, for whose maintenance and medical attendance sums varying from 10s. to 40s. a week were paid (except that about five patients paid an extra 1*l.* a week for extra room accommodation); it was founded and built with charitable donations, it was an institution for the relief of persons suffering from a distressing disease, and it was managed by charitable persons not deriving any pecuniary benefit therefrom, but, on the contrary, assisting

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it by their subscriptions. The real property on which the institution was carried on was vested in trustees upon trust to be used as a lunatic hospital, and for the benefit of the inmates thereof, and for no other purpose, and in such manner as the rules of the institution should direct, and there was no power of sale ; the endowment funds were also vested in trustees for the benefit of the hospital and the inmates, as a majority of the voluntary donors and subscribers should direct, and the hospital and its inmates could alone derive benefit from the real or personal estate connected with it. An assessment had been made upon an alleged profit of 580*l.* The committee of the hospital submitted that "profits," as defined by the Income Tax Acts, meant what remained after deducting the value of the occupation of the premises where the profit was made, and that, if this was allowed, a loss of 420*l.* would appear instead of the alleged profit of 580*l.* They also alleged that the income of the hospital was exempt as being applied to charitable purposes only. There had been a change in the amount of support and in the class of patients received by the hospital, so that for three years at least there had been an occasional balance in favour of the trustees. It was held that the institution, being endowed with a substantial charitable endowment, was exempt from income tax as a

“hospital.” It was pointed out that if the profits were assessed apart from the buildings as upon a going concern from which profit was derived, a very different question would arise. But the assessment appealed against was not an assessment under Schedule D., and the appeal must be allowed. (*Cawse v. Nottingham Lunatic Asylum*, [1891] 1 Q. B. 585; 39 W. R. 461; 60 L. J., Q. B. 485; 65 L. T. 155.)

The Whittingham Asylum was a county lunatic asylum established under 16 & 17 Vict. c. 97, and was provided for the reception and relief of pauper lunatics. The medical superintendent, medical officers, and steward occupied apartments situate in the asylum building; the chaplain occupied a house within the asylum grounds. The apartments and house were not rated or charged in the poor rate assessment, in accordance with sect. 35 of 16 & 17 Vict. c. 97. The medical superintendent, medical officers, and steward, were bound to be resident in the asylum, and might at any time be transferred from one set of rooms to another. The county justices, being assessed in respect of the apartments and house, appealed, contending that, as they were bound by 16 & 17 Vict. c. 97 to provide an asylum for the reception of pauper lunatics, and as there was no beneficial occupation on the part of these officers, who were acting as their servants, they were not liable to

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assessment. It was held that the assessment had been rightly made. (*Bray v. Justices of Lancashire*, 22 Q. B. D. 484; 37 W. R. 392; 58 L. J., M. C. 54.)

3. Allowance for literary or scientific institutions.

3. Literary or scientific institutions. For the duties charged on any building the property of any literary or scientific institution, used solely for the purposes of such institution, in which no payment is made for any instruction there afforded; provided that the building is not occupied by any officer of such institution, nor by any person paying rent for the same.

4. Allowance for charity lands, &c.

4. Charity lands, &c. For the duties charged on the rents and profits of lands, &c., belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes.

Cases of
Regina v.
Commissioners of
Income
Tax:
Commissioners for
Special
Purposes
v. Pemsel.

The meaning of the words "charitable purposes" was considered in the case of *Regina v. Commissioners of Income Tax* (22 Q. B. D. 296; 37 W. R. 294; 58 L. J., Q. B. 196; 60 L. T. 446). Lands had been conveyed to trustees upon trust to apply the rents and profits in part to the maintenance of the missionary establishments of the United Brethren, in part to the maintenance of educational establishments of the same religious body, such educational establishments being for the maintenance, support, and education of the children of their ministers and missionaries, and special regard was to be

had to the children of such ministers as were *Chap. II.* least able to support the expense of their children's education; in part to establishments of the same religious body called choir houses, which were used for the residence and support of single or unmarried persons belonging to the United Brethren, selected either as deserving in themselves of the benefit of the endowment, or as likely to advance the religious interests of the community. Other lands had been conveyed to the same trustees, upon trust to apply the rents and profits for the benefit and general purposes of the establishment of the Protestant Episcopal Church of the United Brethren at Gracehill, Ballymena, in the county of Antrim, in Ireland. The question was whether the purposes to which the income of the estates were applied were "charitable purposes" within the meaning of the Income Tax Act, 1842. In the Queen's Bench Division (England), the judges (Lord Coleridge, C. J., and Grantham, J.) differed, but, the junior judge withdrawing his judgment, judgment was given for the Crown. In the Court of Appeal, the judgment of the Court below was reversed. Lord Esher, M. R., said that he agreed with all the reasoning of the Lord Chief Justice, but not with his conclusions. He agreed with the decision in a case in Scotland which had been cited in argument (*Baird's Trustees v. Inland Revenue*, 25 Sc. L. R. 533),

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that the phrase must be construed in its popular sense, as it would be understood by all the educated people in the United Kingdom, not in a technical sense in which it would be understood by a part only of such people. It must not be construed in the large sense which had been given to it by the English Court of Chancery in using the Statute of Elizabeth (43 Eliz. c. 4) as a means of formulating and extending its jurisdiction, in which sense it would include many things which no educated person would think of considering charities. The term might be paraphrased thus:—"Rents and profits are given for charitable purposes, when lands are given in trust that the income shall be expended in assisting people to something considered by the donor to be for their benefit, and the donor intends that such assistance shall be given to people who, in his opinion, cannot, in consequence of their poverty, obtain the benefit without his assistance, and where the donor's intention to assist such poverty is the substantial cause of his gift." The missions to the heathen, which were one of the objects of the trust, were missions to poor heathen, who had not the means of getting religious instruction for themselves, and therefore the assistance to these missions was a charitable purpose. The education of the children of missionaries and ministers, which was another object of the trust,

was intended for the assistance of persons who without such assistance could not get the education given ; that assistance was, therefore, a charitable purpose. The choir houses, which were the third object of the trust, were also a charitable purpose, the object being to benefit persons whom the donor considered to require assistance on account of their poverty. Fry, L. J., was of opinion that the words "charitable purposes" were technical words, to be understood in their technical meaning, but held that the statute 43 Eliz. c. 4 had determined that technical meaning, and amounted to a declaration by the legislature of the sense in which the word "charitable" was then understood. From that time forward "charity" meant, in all the Courts which had to do with it, all the uses and intents mentioned in the preamble to the statute, and analogous uses and intents. There was no question but that that technical meaning would include the case before the Court. If he was wrong in his principle of construction, he agreed with the Master of the Rolls that, according to the popular meaning of the words, the three objects to which the money was dedicated were charitable purposes. Lopes, L. J., arrived at the same conclusion, but by the mode of reasoning of the Master of the Rolls. On appeal to the House of Lords, the decision of the Court of Appeal was affirmed, the case of *Baird's Trustees*

Chap. II. v. *Lord Advocate* (*ante*, p. 84) being disapproved. *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A. C. 531; 61 L. J., Q. B. 265.

5. Exemption of trades unions' "provident benefits" fund. 5.¹ Trade unions duly registered under the ²Trade Union Acts, 1871 and 1876, and the rules of which limit the amount assured to any member, or person nominated by or claiming under him, to a sum not exceeding in the total 200*l.*, and the amount of any annuity granted to any member, or person nominated by him, to a yearly sum not exceeding 30*l.*, are exempt from income tax under schedule A. in respect of interest and dividends applicable to and applied solely for the purpose of "provident benefits." The phrase "provident benefits" is defined to mean payment to a member during sickness, or incapacity from personal injury, or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, or a payment in discharge, or aid of, funeral expenses on the death of a member or a wife of a member, or as provision for the children of a deceased member; where the payment in respect of which exemption is claimed is a payment expressly authorized by the rules of the trade union claiming the exemption.

The mode in which the allowances are claimed and

¹ "The Trade Union (Provident Funds) Act," 1893 (56 Vict. c. 2), ss. 1, 3.

² 34 & 35 Vict. c. 31; 39 & 40 Vict. c. 22.

made, will be described ¹later on. ²Like allowances Chap. II. are made to the trustees of the British Museum. It must be understood that the properties are assessed, and the duties levied, in the usual way, notwithstanding the allowances made afterwards.

Allowance to Owner of Land when Profits are found to fall short of Assessment.—³If, at the end of any year of assessment, an owner of land, being also the occupier thereof, and occupying the land for purposes of husbandry only, whether he obtains his living principally from husbandry or not, finds, and satisfies the Commissioners by whom he has been assessed in respect of such land, that his profits and gains arising from the occupation of such land during the said year fall short of the sum upon which the assessment was made, the Commissioners may cause an abatement to be made from the amount of the assessment. If the applicant for relief satisfies the Commissioners that his income from every source for the year of assessment was under 150*l.*, he is entitled to relief as ⁴a person whose yearly income is less than 150*l.*

Allowance on account of Life Insurance or Purchase of Deferred Annuity.—⁵Any person who has made

¹ See *post*, pp. 272 *et seq.*

² 5 & 6 Vict. c. 35, s. 149.

³ 14 & 15 Vict. c. 12, s. 3; 16 & 17 Vict. c. 34, s. 46; 43 & 44 Vict. c. 20, s. 52. As to the mode in which the allowance is to be claimed, see *post*, pp. 278, 279.

⁴ As to this relief, see *post*, p. 96.

⁵ 16 & 17 Vict. c. 34, s. 54; 16 & 17 Vict. c. 91, s. 1;

Chap. II. insurance on his own life, or on the life of his wife, or who has contracted for any deferred annuity on his own life, or on the life of his wife, in or with any insurance company existing on the 1st November, 1844, or registered pursuant to the Act 7 & 8 Vict. c. 110, or ¹under any Act passed in the Session of Parliament of the 16th and 17th years of her Majesty, or ²in or with any friendly society legally established under any Act of Parliament relating to friendly societies, and ³any person who has contracted for any deferred annuity on his own life, or on the life of his wife, with the Commissioners for the Reduction of the National Debt, and ¹any person who under any Act of Parliament is liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend in order to secure a deferred annuity to his widow, or a provision to his children after his death, may, if he has been

22 & 23 Vict. c. 18, s. 6. The provision does not apply to insurance with a foreign insurance company. It is doubtful whether it applies to insurance with a Scotch company, Scotch insurance companies being expressly excepted from the operation of 7 & 8 Vict. c. 110. *Colquhoun v. Haddon*, 24 Q. B. D. 491; 38 W. R. 366; 59 L. J., Q. B. 142; and on appeal, 25 Q. B. D. 129; 38 W. R. 545; 59 L. J., Q. B. 465; 62 L. T. 853.

¹ 16 & 17 Vict. c. 34, s. 54. No Act for the registration of insurance societies was in fact passed during this session.

² 18 & 19 Vict. c. 35, s. 1. The premiums payable in respect of such insurances must not be made for shorter periods than three months.

³ 22 & 23 Vict. c. 18, s. 6.

assessed to the duty under Schedule A., and has paid Chap. II. the duty assessed upon him, or if he has been charged with duty by way of deduction,¹ claim repayment of such a proportion of the duty paid by him as the amount of such annual premium, &c., bears to the whole amount of his profits or gains on which he is chargeable under all or any of the schedules.² But no such allowance may be made in respect of such annual premium beyond one-sixth part of the whole amount of the profits and gains of the claimant.

*Exemption in Case of Annual Income being less than 150*l.*, and Allowance in Case of Annual Income being less than 400*l.**—³ A person whose income is less than 150*l.* a year is exempted from payment of income tax; and a person whose income, though exceeding 150*l.* a year, is less than 400*l.* a year, is entitled to an abatement in respect of 120*l.* of his income. The mode in which the exemption and abatement respectively are claimed and allowed will be described ⁴ later on. ⁵ For the purpose of claiming such exemption, the annual value of lands, &c. belonging to, or in the occupation of, any person claiming the exemption is estimated, for the purpose of ascertaining

¹ As to the mode in which the claim is made, see *post*, pp. 271, 272.

² 5 & 6 Vict. c. 35, s. 54.

³ 39 & 40 Vict. c. 16, s. 8.

⁴ See *post*, pp. 265—271.

⁵ 5 & 6 Vict. c. 35, s. 167.

Chap. II. his title to the exemption, according to the rules and directions contained in the Schedules A. and B. respectively ; and the income arising from the *occupation* by the claimant of lands, &c. chargeable under Schedule B. is deemed, for the purpose aforesaid, to be equal in England to one-half of the full annual value thereof, estimated according to the said rules and directions ; and where the claimant is the proprietor, as well as the occupier, of any such lands, &c. the amount deemed as aforesaid to be the income arising from the occupation of such lands, &c. is added to the amount of the full annual value thereof ; and the aggregate amount is deemed, for the purpose aforesaid, to be the income of the claimant arising from the lands, &c. of which he is the proprietor and occupier as aforesaid. The income arising from any lease of, or composition for, tithes, is deemed, for the purpose aforesaid, to be equal to one-fourth of the full annual value of such tithes estimated in manner aforesaid.

SECTION II.—SCHEDULE B.

Occupation of Land, &c.—Under Schedule B. the duty is charged “for ¹and in respect of the *occupation*,

¹ 16 & 17 Vict. c. 34, s. 2. As to the duty charged in respect of land occupied by a dealer in cattle, or by a dealer in, or seller of milk, see *post*, pp. 156, 157. Farmers may now elect to be charged under Schedule D. This option was first given in 1887, by the Customs and Inland Revenue Act of that year (50 & 51 Vict. c. 15), the provisions of the 18th section of which are as follows: “It shall be lawful for any

of all such lands, tenements, hereditaments, and heritages as aforesaid" (that is, as are comprised in Schedule A.), ² except dwelling-houses, with their offices, not occupied with farms of lands, or tithes, for farming purposes, and except warehouses, or other buildings, occupied for the purpose of carrying on a trade or profession, "for every ³twenty shillings of the annual value thereof." The duty charged under Schedule B. is a duty which is imposed upon, and has to be paid by, the *occupier*, and not the *owner* of land.

A police-officer, compelled by the duties of his office, and the circumstances in which he holds that office, to occupy a house, separate

Case of
Burt v. Roberts.

person occupying land for the purposes of husbandry only to elect to be assessed to the duties of income tax under Schedule D., and in accordance with the rules of that schedule, in lieu of assessment to the duties under Schedule B. The election of such person shall be signified by notice in writing, delivered personally, or sent by post in a registered letter, to the Surveyor of Taxes for the district, within two calendar months after the commencement of the year of assessment; and from and after the receipt of such notice the charge upon him to the duties of income tax for such year shall be under Schedule D., and the profits or gains arising to him from the occupation of the lands shall for all purposes be deemed to be profits or gains of a trade chargeable under that schedule." Each "year of assessment" begins on the 6th April; any such election must therefore be made between the 6th April and the 6th June in any year, and is operative for "the current year of assessment."

² 5 & 6 Vict. c. 35, s. 63, No. 7.

³ 16 & 17 Vict. c. 34, s. 2. See p. 44, note ³.

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from the police-station, but communicating with the prison yard; the house being liable to be used for purposes connected with the police force as the chief constable of the county may direct; and the police-officer being liable to be removed at any time, is not an "occupier," although the house is for the time being wholly occupied by him, and furnished with his own furniture, and a sum is deducted from his salary by way of rent. *Burt v. Roberts*, L. R., 3 Ex. D. 66.

Annual Value under Schedule B.—The rules for determining the annual value under Schedule B. are generally¹ the same as those employed for determining the annual value under Schedule A.; but the following modifications of those rules, so far as concerns assessments under Schedule B., must be noticed:—

1. Lands subject to tithe rent-charge and lands tithe free. In all cases where lands are subject to a rent-charge in lieu of tithes under the³ Act passed for the commutation of tithes, and in all other cases where lands in England are not subject to tithe, or to any modus or composition real in lieu thereof, there shall be deducted out of the duties contained in Schedule B. a sum not exceeding one-eighth part thereof.

¹ 5 & 6 Vict. c. 35, s. 63, Nos. 9, 10, 11.

² *Ibid.*, No. 7.

³ 6 & 7 Will. IV. c. 71.

2. ¹ In all cases where lands in England are subject to a modus or composition real, and not subject to any tithe, there shall be deducted out of the duties contained in Schedule B. so much thereof as, together with the like rate on such modus or composition real, shall not exceed one-eighth part of such duties.

3. ¹ In all cases in which lands in England are subject to a modus or composition real in lieu of certain specific tithes, and also are subject to certain other specific tithes; or where such lands are free of certain specific tithes, and are subject to certain other specific tithes, the annual value of such lands shall, for the purpose of charging the duties under Schedule B., be estimated at the rack-rent at which the same would let by the year if wholly free from tithes, and there shall be deducted therefrom the amount or value of one-eighth of the said duties, chargeable on the said estimate.

The occupier of a deer forest in Scotland claimed to be assessed under Schedule B. upon the ordinary value of the land, part of the rent actually paid, which exceeded this ordinary value, being paid for the privilege of shooting deer, which, it was argued, was not "a property capable of actual occupation" as required by the Act, and the duty under Schedule B. being, it was said, really chargeable in respect of

Case of
Sir George
Nathaniel
Broke
Middleton,
Bart.

¹ 5 & 6 Vict. c. 35, s. 63, No. 7.

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profits only. But it was held that the claim was not maintainable ; that in the case of lands no estimate of profits is required as in the case of trades and professions, but a statutory mode of proving what the profits are is established—*i.e.*, by taking the annual value ; that a deer forest is within the meaning of sect. 60 ; and that the privilege of shooting game let to a tenant is part of a right of property. Case of *Sir George Nathaniel Broke Middleton, Bart.*, 13 *Sc. L. R.* 378.

A deer
forest is
within
s. 60 of
5 & 6 Vict.
c. 35.

A right of
shooting
is part of
a right of
property.

Exceptions—Lands occupied as Nurseries or Gardens for the Sale of Produce.—¹ The profits arising from lands so occupied are estimated according to the rules contained in Schedule D., which we shall state ² presently, and the duty thereon charged at the rate contained in that schedule ; and, when the duty has been so ascertained, it is charged under Schedule B., as upon profits arising from the occupation of lands. ³ But lands occupied for the growth of hops are charged wholly under Schedule B.

Deductions and Allowances under Schedule B.—The rules for determining the annual value under Schedule B. being, as we have said, generally the

¹ 5 & 6 Vict. c. 35, s. 63, No. 8. This enactment includes lands occupied for the growth of hops ; but by 16 & 17 Vict. c. 34, s. 39, such lands are to be assessed under Schedule B.

² See *post*, Chap. II., sect. 4.

³ 16 & 17 Vict. c. 34, s. 39.

same as those employed for determining the annual value under Schedule A., the deductions and allowances made under that schedule will also be made, so far as they may be applicable, in cases of duties chargeable under Schedule B. The following allowance in the case of duty payable under Schedule B. is, it will be seen, very similar to that allowed in the case of duty chargeable under Schedule A. ¹If at the end of any year of assessment any occupier of land, occupying the same for the purposes of husbandry only, not being the owner thereof, who has been assessed in that year under Schedule B. in respect of such land, finds, and satisfies the Commissioners by whom the assessment was made, that his profits and gains arising from the occupation of such land during the said year fell short of the sum upon which the assessment was made, the said Commissioners may ²cause an abatement to be made from the amount of the assessment. ³In cases where an abatement from the amount of the assessment would afford inadequate relief, the occupier of lands for the purposes of husbandry only may obtain an adjustment of his liability by reference to the loss, and to the aggregate amount of his income for that year.

¹ 14 & 15 Vict. c. 12, s. 3; 16 & 17 Vict. c. 34, s. 46; 43 & 44 Vict. c. 20, s. 52.

² As to the mode in which the abatement is made, see *post*, pp. 278, 279, 287.

³ 53 & 54 Vict. c. 8, s. 23. As to the mode in which the relief is claimed, and the time within which the claim must be made, see *post*, p. 287.

Chap. II. But, if he avails himself of this relief, he will not be entitled to claim, or be allowed, a deduction on the assessment for a subsequent year by reference to the amount of loss in respect of which he has obtained relief. ¹If the applicant for relief satisfies the Commissioners that his income from every source for the year of assessment was under 150*l.*, he is entitled to relief as a ²person whose yearly income is under 150*l.*

Abatement on account of Life Insurance or Purchase of Deferred Annuity.—What ³we have said with reference to this abatement, when dealing with the duty under Schedule A., will apply equally to the duty under Schedule B.

*Exemption in Case of Annual Income being less than 150*l.*, and Allowance in Case of Annual Income being less than 400*l.**—The exemptions and abatement we ⁴have mentioned in dealing with the duty under Schedule A. may also be claimed in case of the duty under Schedule B. We have ⁵already incidentally referred to the mode in which, for the purpose of this exemption and abatement, the annual value of the occupation of lands, &c. is estimated. The mode in which

¹ 16 & 17 Vict. c. 34, s. 30; 39 & 40 Vict. c. 16, s. 8.

² See below. As to the mode in which the relief is claimed, see *post*, pp. 265—271, 287.

³ *Ante*, pp. 87—89.

⁴ See *ante*, pp. 89, 90.

⁵ *Ibid.*

the exemption or abatement is claimed and allowed Chap. II.
will be described ¹later on.

SECTION III.—SCHEDULE C.

Interest and Annuities payable out of Public Revenue.

—Under Schedule C. the duty is charged “²for and in respect of all profits arising from interest, annuities, dividends, and shares of annuities, payable to any person, body politic or corporate, company or society, whether corporate or not corporate, out of any public revenue,” for “³every twenty shillings of the annual amount thereof.” The duty extends to “⁴all public annuities whatever payable in Great Britain out of any public revenue in Great Britain or elsewhere; and to all dividends, and shares of such annuities, respectively;” ⁵and also to interest payable out of the public revenue, or securities, issued at the ex-

¹ See *post*, pp. 265—271, 286, 287.

² 16 & 17 Vict. c. 34, s. 2. See p. 155, *post*, as to the deduction allowed to a clergyman, or minister of any religious denomination, for expenses incurred in the performance of his duty or function.

³ Fractional parts of 20s. are also charged with duty by sect. 3 of the Act, 16 & 17 Vict. c. 34; but no duty is charged of a lower denomination than 1d.

⁴ 5 & 6 Vict. c. 35, s. 88. Annuities or dividends payable out of the revenue of a foreign state are chargeable. 5 & 6 Vict. c. 80, s. 2. And, of course, annuities and dividends payable out of any colonial revenue. See 5 & 6 Vict. c. 35, s. 96.

⁵ 5 & 6 Vict. c. 35, s. 97.

Chap. II. chequer or other public office, by whatever names such securities are called, except in the following cases of exemption, viz. :—

First case of exemption :
Stock of friendly societies.

1. ¹Stock, &c., of friendly societies. The stock, dividends, or interest, of any friendly society legally established under any Act relating to friendly societies, not assuring to any individual more than 200*l.*, and not granting any annuity exceeding 30*l.*

Second case of exemption :
Stock of savings banks.

2. ²Stock, &c., of savings banks. The stock, or dividends, of any savings bank established under the provisions of the Act 9 Geo. 4, c. 92 ("An Act to consolidate and amend the laws relating to savings banks"), arising from investments with the Commissioners for the Reduction of the National Debt; and also the dividends, or interest, payable by the trustees of any savings bank upon any funds therein invested belonging to any depositor, or to any charitable institution.

**Case of
*In re the
Yorkshire
Penny
Bank.***

The Yorkshire Penny Bank had been originally constituted as a Savings Bank under 9 Geo. 4, c. 92. It was subsequently incorporated as a company limited by guarantee for the promotion of ³objects within sect. 23 of the Companies Act, 1867. There were no profits. With the money received from depositors the

¹ 5 & 6 Vict. c. 35, s. 88, first exemption.

² *Ibid.*, second exemption.

³ These objects are such as serve to promote commerce, art, science, charity, or any other useful object unconnected with the making of profit.

Bank made investments, and income tax was *Chap. II.* deducted in the usual course from the interest paid on such investments. For many years the Bank obtained repayment from the Special Commissioners of the duty deducted from the interest, but, attention having been drawn to the fact that the operations of the Bank were no longer confined to the receipt of small deposits, the Special Commissioners declined to repay any larger sum than the duty on so much of the interest received as had been paid, or credited, to depositors whose annual interest did not amount to 3*l.* The Bank obtained a rule *nisi*, requiring the Special Commissioners to show cause why a mandamus should not issue directing them to allow the Bank an exemption from income tax. They contended that they were entitled to the allowance under the second exemption of sect. 88 of 5 & 6 Vict. c. 35, or under¹ the third exemption of the same section, either as a savings bank, or as a charitable institution, or under sections 98 and 105 of 5 & 6 Vict. c. 35. The Board of Inland Revenue offered to entertain a claim for repayment of income tax in respect of the interest paid to those depositors whose annual interest in any year did not amount to 3*l.*, and ultimately, the offer being

¹ See *post*, p. 100.

Chap. II. accepted, the rule *nisi* was discharged by agreement, with costs. *In re The Yorkshire Penny Bank*, unreported.

Third case of exemption: Stock of charitable institutions; including British Museum. 3 ¹ Stock, &c., of charitable institutions. The stock or dividends of any corporation, fraternity, or society of persons, or of any trust, established for charitable purposes only, so far as the same are applied to charitable purposes only; and the stock, or dividends, in the names of any trustees applicable solely to the repairs of any cathedral, college, church, or chapel, or any building used solely for the purposes of divine worship, so far as the same are applied to such purposes. ² Stock and dividends, vested in the Trustees of the British Museum, are also exempt from duty; and no salary or payment made out of her Majesty's Exchequer to such trustees is to be charged. But the duties on all salaries of officers or persons employed under the said trustees, are to be charged on the said officers respectively. ³ And a trade union duly registered under the ⁴Trade Union Acts, 1871 and 1876, by the rules of which the amount assured to any member, or person nominated by, or claiming under, him, is limited to a sum not exceeding 200*l.*, and the amount of any annuity granted to any member or person nominated by him is limited to a

¹ 5 & 6 Vict. c. 35, s. 88, third exemption.

² 16 & 17 Vict. c. 34, s. 149.

³ "The Trade Union (Provident Funds) Act, 1893" (56 Vict. c. 2), s. 1.

⁴ 34 & 35 Vict. c. 31; 39 & 40 Vict. c. 22.



yearly sum not exceeding 30*l.*, is entitled to exemption from income tax chargeable under Schedule C., in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of ¹provident benefits.

4. ²Stock in the name of the Treasury or of the Commissioners for the Reduction of the National Debt. The stock, or dividends, standing in the names aforesaid.

5. ³Stock belonging to her Majesty, or to accredited ministers. The stock, or dividends, belonging to her Majesty; and the stock, or dividends, of any accredited minister of any foreign state resident in Great Britain.

Allowance on Account of Life Insurance and Purchase of Deferred Annuities.—What we ⁴have said with reference to this abatement when dealing with the duty under Schedule A. will apply equally to the duty under Schedule C.

*Exemption in Case of Annual Income being less than 150*l.*; and Allowance in Case of Annual Income being less than 400*l.**—The exemption and abatement we ⁵have mentioned in dealing with the duty under Schedule A. may also be claimed in case of the duty

¹ As to what are "provident benefits," see *ante*, p. 86.

² 5 & 6 Vict. c. 35, s. 88, fourth exemption.

³ *Ibid.*, fifth exemption.

⁴ See *ante*, pp. 87, 89.

⁵ See *ante*, pp. 89, 90.

Chap. II. under Schedule C. The mode in which the exemption or abatement is claimed and allowed, will be described ¹later on.

Small Dividends to be charged under Schedule D.—

²When the half-yearly payment on any annuities, dividends, and shares of annuities, otherwise chargeable under Schedule C., does not amount to fifty shillings, the same is to be accounted for, and charged under Schedule D.; ³except in the case of dividends attached to stock certificates issued under the National Debt Act, 1870, from which the duty is deducted, although the dividend does not amount to fifty shillings.

SECTION IV.—SCHEDULE D.

*Annual Profits and Gains from Property and Professions.—*Under Schedule D. the duty is charged ⁴“for and in respect of the annual profits, or gains, arising, or accruing, to any person residing in the United Kingdom, from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and for and in respect of the annual profits, or gains, arising, or accruing, to any person residing in the United Kingdom, from any profession, trade, employment, or vocation, whether the same shall be

¹ See *post*, p. 290.

² 5 & 6 Vict. c. 35, s. 95.

³ 33 & 34 Vict. c. 71, s. 36.

⁴ 16 & 17 Vict. c. 34, s. 2.

carried on in the United Kingdom or elsewhere; . . . Chap. II.
 and for and in respect of the annual profits, or gains,
 arising, or accruing, to any person whatever, whether
 a subject of her Majesty or not, although not resident
 within the United Kingdom, from any property
 whatever in the United Kingdom, or any profession,
 trade, employment, or vocation exercised within the
 United Kingdom" for every ¹twenty shillings of
 the annual amount of such profits and gains; and
 "for and in respect of all interest of money, annui-
 ties, and other annual profits, and gains, not charged
 by virtue of any of the other schedules" for every
¹twenty shillings of the annual amount thereof.²

A man "resides" in Great Britain if he has Case of Young.
 his ordinary residence there, although he is
 absent from that residence for a greater or
 shorter period of each year (*Case of Captain H. Young, Master Mariner*, 16 Sco. L. R. 682), even
 although he is not in Great Britain for six
 months of the year (*Case of Captain H. Young, ubi sup.*), or even although he is absent from Case of Rogers v. Inland Revenue.
 Great Britain the whole year. (*Rogers v. Inland Revenue*, 16 Sco. L. R. 682.) A merchant Case of Lloyd v. Sully.
 having a permanent residence, and carrying on

¹ Fractional parts of 20s. are charged with duty by sect. 3 of the Act, 16 & 17 Vict. c. 34; but no duty is charged of a lower denomination than 1d.

² Farmers may elect to be assessed under this schedule and in accordance with its rules, rather than under Schedule B., 50 & 51 Vict. c. 15 ("Customs and Inland Revenue Act, 1887"). See *ante*, p. 90, note ¹.

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business, at Leghorn, but having also a residence in Scotland which he visited in the summer months, always returning to his permanent abode in Italy, was held liable to be assessed on the profits of his foreign trade brought into Great Britain to meet his expenditure in Scotland, and elsewhere in Great Britain, although the period of his residence in Great Britain had been less than six months in the year. (*Lloyd v. Sully*, unreported.) A joint stock company is charged as a "person." (5 & 6 Vict. c. 35, s. 40.) It "resides" in the place in which it carries on its real trade and business. (*Calcutta Jute Mills Company v. Nicholson*, L. R., 1 Ex. D. 437; 45 L. J., Ex. 821; 35 L. T. 275; 25 W. R. 71.) The place of registration of the company is not conclusive as to its place of "residence," although it is a fact to be taken notice of in connection with all other circumstances in order to determine the place of "residence" of the company. The "Calcutta Jute Mills Company, Limited," was a company registered in England, having its registered office in England, managed by a Board of not less than five directors in England, who appointed a resident director and manager in Calcutta. There were Indian and English shareholders of the company. The whole of the business of the company, the realising, and disposing of, its funds, and the division among the Indian share-

Place of
residence
of a com-
pany.

Case of
*Calcutta
Jute Mills
Co. v.
Nicholson.*

holders of the part of the profits due to them, **Chap. II.**
 was transacted in India. The company made
 no profits in England. The company was held
 liable to assessment upon the whole of its profits,
 not upon so much only as was divided between
 the shareholders in England. ¹The case of *The Cesena Sulphur Company, Limited* (L. R., 1 Ex. D. 428: 45 L. J., Ex. 821; 35 L. T. 275; 25 W. R. 74) was similar.

The Imperial Ottoman Bank was a body incorporated according to the law of Turkey by a firman of the Sultan, established as a state bank for the Ottoman Empire, and having its seat in Constantinople. It had an agency in London by which the usual business of bankers was carried on, managed by the London members of a committee, appointed to administer the affairs of the

Case of A.-G. v. Alexander.

London agency of foreign banking company.

¹ In the case of *Colquhoun v. Brooks* (see *post*, p. 118), where the question was whether a partner in a business carried on in Australia, residing in England, was liable to pay income tax upon the profits of the business in Australia not brought into this country, the question was finally decided in the negative by the House of Lords. Lord Herschell in his judgment expressly abstained from considering whether the facts in the case of the *Cesena Sulphur Company* raised the same question as was raised in the case before him, but said that, inasmuch as the important considerations which had been pressed in argument in the House of Lords were not present to the minds of the learned judges who took part in the decision in the *Cesena Sulphur Company's Case*, it could not be considered as an authority determining the question.

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bank by the shareholders. The bank was held to be not resident in the United Kingdom. *Attorney-General v. Alexander and others*, L. R., 10 Ex. 20; 44 L. J., Ex. 3; 31 L. T. 694; 23 W. R. 255.

Case of
Tischler & Co. v. Apporpe.

Messrs. Tischler & Co. were wine growers and wine merchants, carrying on business as Tischler & Co. at Bordeaux, where they resided. Mr. Tischler, the senior partner, was in the habit of spending about four months in every year in England at different times, and dwelt during that period chiefly in London, and then always at the Royal Hotel, Blackfriars. He had no other place of residence in England. When in England he saw customers, and took orders for wine, which was shipped from Bordeaux by his firm, who sent invoices, sometimes to the purchaser direct, and sometimes to Messrs. Feuerheerd & Co., who acted as general agents for Tischler & Co. Feuerheerd & Co. were paid by commission upon the amount of all wines sold either through them or by Mr. Tischler when in London. The commission included a guarantee of all debts for wine sold in England. A room was provided for Mr. Tischler in Feuerheerd & Co.'s office, the rent of which was paid by Tischler & Co., who had their own clerk there, and their name painted on the door. Payment for wines ordered was made to Feuerheerd & Co. for Tischler & Co., and Feuerheerd & Co. received invoices, or

copies of invoices, of all wines sent by Tischler & Co. from Bordeaux to England. It was held that Tischler & Co. did not "reside" in the United Kingdom, but were liable to income tax as carrying on a trade there. *Tischler & Co. v. Apthorpe*, 52 L. T. 814; 33 W. R. 548.

The Great Northern Telegraph Company of Copenhagen was a company "resident" at Copenhagen. It had submarine cables in connection with the United Kingdom, and other submarine cables and foreign telegraph lines not in connection with the United Kingdom. It had also, under an agreement with the Postmaster-General, separate wires between Aberdeen, Newcastle, and London, worked by its own staff in workrooms in Aberdeen, Newcastle, and London. No profits were made by the company from the land lines in the United Kingdom used by them, except so far as the use of these lines enabled the company to make profits by the transmission of messages abroad. It was held that the company must be assessed on what they received in the United Kingdom for transmission of messages abroad, after deducting sums paid by them for the use of foreign lines. *Erichsen v. Last*, L. R., 8 Q. B. D. 414; 51 L. J., Q. B. 86; 45 L. T. 703; 30 W. R. 301.

Messrs. Pommery and Greno were wine merchants and shippers, having their chief office for business at Rheims, in France, where they re-

Case of
Pommery v. Ap-
thorpe.

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sided. They were in the habit of shipping champagne to England for the purpose of sale. They had an agent in England, one Hubinet, who acted as their representative in England in the sale of their wine and the transaction of their business. He had a place of business in Mark Lane, in the City of London, the premises being taken in his own name. He, on behalf of Messrs. Pommery and Greno, employed travellers, and appointed sub-agents who sought for orders for Messrs. Pommery and Greno's wines. All orders obtained were sent by Hubinet direct to Messrs. Pommery and Greno at Rheims; in the case of small orders the wine was supplied from a stock of wine kept in London; in the case of larger orders the wine was shipped by Messrs. Pommery and Greno direct to the customers. The amounts due were collected by Hubinet on behalf of Messrs. Pommery and Greno, who kept a banking account in London. Drafts given in payment were sent to Messrs. Pommery and Greno for indorsement. In case of default in payment proceedings were taken in English Courts. The agent received a commission on all wines sold in England, as an equivalent for his expenses in rent, clerks' salaries, and otherwise, and as remuneration for his services. The name of Pommery and Greno was inserted among the London wine merchants in the "London Directory," coupled with that of Hubinet as agent. Hubinet

was duly assessed to income tax on all profits ^{Chap. II.} made by him in respect of his agency, and paid income tax thereon. Messrs. Pommery and Greno were assessed on their profits in the name of their agent Hubinet, and appealed on the ground that the profits were made in France and not in England. It was attempted to distinguish the case from that of *Tischler and Co. v. Apthorpe*, on the ground that in the latter case one of the appellants' firm spent four months in the year in this country, and personally took orders, and the English agent received all the moneys; and from the case of *Erichsen v. Last*, on the ground that in that case the whole business was certainly done in this country. But it was held that no serious distinction could be drawn between the cases, and that Messrs. Pommery and Greno were rightly assessed. *Pommery v. Apthorpe*, 35 W. R. 307; 56 L. J., Q. B. 155; 56 L. T. 24.

The facts were not so strong in the case of ^{Case of} *Messrs. Werle and Co.*, who were wine mer- ^{Werle &} _{Co. v. Col-} ^{quhoun.}chants, resident at Rheims, in France. They employed a London firm of wine merchants as their sole agents in the United Kingdom. The agents' office was taken in their own name, and on their own account, and they carried on their own business there. The agents, with the authority of *Messrs. Werle and Co.*, issued advertisements and circulars in England for the

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purpose of securing contracts. The name of "Werle and Co." was exhibited on the inside window of the agents' office in London, and was entered in the "London Directory." Contracts for wine were made by the agents in England, and transmitted to Rheims. No stock of wine was kept in England by Messrs. Werle and Co., nor had they any banking account in England. The purchasers either paid the agents, who remitted the amount to Messrs. Werle and Co., or paid Messrs. Werle and Co. direct. Messrs. Werle and Co. sent receipts to the purchasers for all payments. The agents were paid by a commission (upon which they paid income tax) on all wines sold by Messrs. Werle and Co. in the United Kingdom, and paid all expenses. It was held that there was a trade carried on in England, and that the profits were assessable to income tax. Lord Esher, M. R., said that it was not essential that the profits should be received in England, nor that there should be an establishment in England. It was not necessary that anyone should be found to be assessed in England under¹ sect. 41 of 5 & 6 Vict. c. 35. If the Crown can find such an agent as is mentioned in that section it can assess him; but if it cannot, that does not derogate from the right of the Crown, if there is a person assessable. The Crown must by some means or other get at

¹ See *post*, p. 179, note³.

that person. Fry, L. J., agreed with the Master ^{Chap. II.} of the Rolls upon the construction to be placed on sect. 41 of 5 & 6 Vict. c. 35, but thought that Messrs. Werle and Co. had an agent within the United Kingdom in receipt of the profits and gains, as part of the gross sum which was paid him by the purchaser. *Werle and Co. v. Colquhoun*, 20 Q. B. D. 753; 36 W. R. 613; 57 L. J., Q. B. 323; 58 L. T. 756.

In the case of the Imperial Ottoman Bank, ^{Case of Gilbertson v. Fergusson.} mentioned above, it was held that English profits made by the London agency of the bank were liable to assessment. *Gilbertson v. Fergusson*, L. R., 7 Q. B. D. 562; 46 L. T. 10. ^{London agency of foreign banking company.}

It was also held, in the case of the Imperial Ottoman Bank (*ubi sup.*), that the English shareholders' share of the profits made in Turkey was liable to assessment : *e. g.*, if the shares had been equally held in England and in Turkey, and the profits made in England and in Turkey had been equal, three-fourths of the profits would have been assessable. ^{English shareholders' share of profits of foreign banking company.}

Mr. Brooks resided in England, but was ^{Case of Colquhoun v. Brooks.} partner in a firm which carried on business exclusively in Australia. The question was whether he was only liable to be assessed in respect of his interest in the Australian firm on the sums from time to time received by him in England in respect of that interest, or whether he was liable to be assessed on the whole of his

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share in the profits of the Australian firm, whether received in England or not. In the Queen's Bench Division, the judges, Wills, J., and Stephen, J., differed. Wills, J., held that the generality of the words in the first portion of Schedule D. was cut down by the provisions of 5 & 6 Vict. c. 35, applicable to Schedule D., more especially sects. 100, 106, and 108; that the method of construction summarized in the maxim *expressio unius exclusio alterius*, from which it had been argued that, from the very fact that such limitations are imposed in the case of profits derived from foreign or colonial securities or possessions, it is to be inferred that no such limitation is to be imposed in the case of profits derived from a trade carried on abroad, did not help him to arrive at what was meant; that there was authority for saying that there is a general rule as to the extent to which English Acts of Parliament dealing with property in general are to be treated as applying to foreign property (using the word "foreign" as including colonial property), that is, property which, whether situate in England or elsewhere, is not, at the time to which the discussion relates, English property, and that, in the words of Lord Westbury in *Attorney-General v. Campbell* (L. R., 5 H. L. 524—530; 21 W. R. 34, n.), "You cannot apply an English Act of Parliament to foreign property while it remains

foreign property"; that the question in every instance was one of fact, "Is the property sought to be affected British property or not?" and that there was absolutely nothing to give a British character to the unremitting portion of the profits made in Melbourne by a business carried on in the colony of Victoria only; that the principle of the decision in *Sulley v. Attorney-General* (8 W. R. 472; 5 H. & N. 711; reversing *Attorney-General v. Sulley*, 7 W. R. 666; 4 H. & N. 769) was that the profits of a business carried on abroad, and not in the United Kingdom—profits made abroad, and never remitted here—are not taxable; that it was far easier to suppose that the omission of any special mention of the case of a person resident here and not receiving the whole of the profits of a business carried on abroad by a firm of which he is a partner was an accident, than that there should be, in respect of an isolated case of this kind, a departure, without express words, from a well-understood principle regulating the application of Acts of Parliament in general; and that the provisions relating to the profits of foreign securities pointed out what, for the purposes of the Income Tax Acts, effected the conversion of foreign into British property, viz., the receipt of the profits, whether of foreign securities or of foreign trade, in this country. Stephen, J., differed. He

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thought the language of Schedule D. concluded the question. It could not be limited in the way suggested. He pointed out that the words of Lord Westbury, quoted by Wills, J., were used with reference to statutes imposing duties on property when, by the death of its owner, it changes hands. The Income Tax Acts were directed to taxation of persons, not to distribution or management of things; and he saw no reason why an Act which in terms taxed residents in England for the profits of trade carried on abroad should be cut down by implication, so as to apply to those parts only of the profits which were brought home. Wills, J., as junior judge, withdrew his judgment, in accordance with the old practice in the ¹Court of Exchequer, and judgment was given for the Crown. But in the Court of Appeal, the judgment was reversed by Lord Esher, M. R., and Lopes, L. J., Fry, L. J., dissenting. Lord Esher, M. R., said that it was impossible to have words larger than those used in Schedule D. of the ²Income Tax Act, 1853; if taken in their largest sense, they would apply to a foreigner just as much as to a servant of the Queen, so that any foreigner residing in this country for a time sufficient to make his stay a residence would have to pay income tax for any kind

¹ The old Court of Exchequer had jurisdiction in revenue cases.

² 16 & 17 Vict. c. 34.

of property whatever, whether situate in the Chap. II. United Kingdom or elsewhere; that such an enactment would amount to a tyrannical and abnormal interference in regard to matters with which this country has nothing to do; and that, unless it was perfectly clear (which it was not) that Parliament had intended to commit an outrage on the law and comity of nations, it could not be supposed that any such consequences were intended to result from the general words used. He adopted all the arguments which Wills, J., had given in his judgment. Lopes, L. J., concurred, but Fry, L. J., found himself, unable to place any limitation upon the words used in Schedule D. He thought that the obvious and express language of the legislature did create a charge upon persons resident in this country in respect of any profits, wherever they had been earned. The argument that such legislation would have amounted to an outrage upon the law of nations, he dismissed as one for the legislator, not for the judge; he quoted with approval the language of Lord Cairns in *Parlington v. The Attorney-General* (L. R., 4 H. L. 100): "The principle of all fiscal legislation is this. If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be"; he did not dissent from the pro-

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position of Lord Westbury, but held that it had no application to the case before him; he said that the income tax was not like the succession duty, or the legacy duty, a charge upon a thing, but was a charge upon a person in respect of a thing, and he knew of no principle of law which prohibited the Legislature from using foreign property, or anything in the world they liked, as the standard by which the person resident within this country was to be charged; he thought the rules in ¹ cases 4, 5, and 6 furnished no general guide for the interpretation of the statute. The judgment of the Queen's Bench Division was reversed in accordance with the opinion of the majority of the Court of Appeal. The case was carried to the House of Lords, where the decision of the Court of Appeal was affirmed, but for different reasons. Lord Fitzgerald thought that there would be no hardship in charging Mr. Brooks on his share of the profits of the Australian firm, actually ascertained, but held that there was no sufficient finding to warrant him in coming to the conclusion that such profits had been so ascertained as to be legitimately the subject of taxation here. He also held that profits derived from trade carried on entirely elsewhere than in the United Kingdom are not accessible for income tax until received here by the person entitled to

¹ See *post*, pp. 158, 159, 162, 163.

them, being a resident in the United Kingdom. Lord Herschell did not attach weight to the argument that the result of allowing the contention of the Crown to prevail, which must be extended to the case of a foreigner, would involve a violation of international law, nor did he consider that the decisions under the Legacy and Succession Duty Acts, which imposed a limit upon the broad language of the enactments subjecting legacies and successions to taxation, supplied a rule applicable to questions of income tax. But he pointed out the anomalies in the incidence of the tax which would result from adopting the view put forward on the part of the Crown; that none of the elaborate machinery provided for carrying out the taxing purposes of the Income Tax Acts was applicable to the assessment of the profits of a trade carried on entirely outside the United Kingdom, no part of which is received here; and that the shares of the Australian partners of the Australian firm clearly could not be taxed, and that there was no provision for a separate statement and assessment of the profits of the English partner such as the Crown contended for. And referring to the rule styled the ¹fifth case of Schedule D., dealing with the duty to be charged in respect of possessions in any of her

¹ See *post*, p. 162.

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Majesty's dominions out of Great Britain, and foreign possessions, he expressed himself unable to see why the word "possessions" might not be fitly interpreted as relating to all that is possessed in her Majesty's dominions out of the United Kingdom, or in foreign countries, and so as including the interest which a person in this country possessed in a business carried on elsewhere. This construction would have the advantage of removing the glaring anomaly which would inevitably flow from the rival construction, and of taxing alike such portion only of the profits arising abroad, whether from property or trade, as is received in the United Kingdom. In the case of the *Cesena Sulphur Co. v. Nicholson* (see *ante*, p. 105), the head office, and therefore the principal place of business, of the companies whose income was under consideration, was in England, and the argument turned principally upon where those companies resided. Without stopping to inquire whether the facts in that case raised the same question as was then to be decided, it was certain that the important considerations which had been pressed in argument were not present to the minds of the learned judges who took part in the decision upon that case, which could not, therefore, be regarded as an authority determining the question. Lord Macnaghten, after saying that he did not think that any light was

thrown upon the question by considering the **Chap. II.**
 Legacy Duty Acts, or the Succession Duty Act,
 or the decisions on those statutes; or that there
 was any room for the argument that “arising
 or accruing to any person” in the first sentence
 of Schedule D., meant “received by any person
 in the United Kingdom”; or that there was
 sufficient force in the argument founded upon
 the comity of nations; entered into an elaborate
 examination of the language of the earlier
 Income Tax Acts, from which the existing Acts
 were more or less copied, and, comparing the
 language of the existing Income Tax Acts, and
 noting the inadequacy of the provisions for
 stating and assessing the profits of a partnership
 business wholly carried on abroad, he came to
 the conclusion that the profits and gains arising
 from Mr. Brooks’ Melbourne business fell under
 the ¹fifth case of Schedule D., and were charge-
 able accordingly on the actual sums received in
 the United Kingdom. *Colquhoun v. Brooks*, 19
 Q. B. D. 400; 57 L. J. Q. B. 70; 57 L. T. 448.
 On appeal, 21 Q. B. D. 52; 36 W. R. 657; 57 L. J.
 Q. B. 439; on appeal to the House of Lords, 14
 App. Cas. 493; 38 W. R. 289; 59 L. T. 850.

The ground of the decision in *Colquhoun v. Brooks* (*ubi sup.*) was that a person who carries on a business solely abroad, was not liable to pay income tax in England upon the profits of that Case of London Bank of Mexico and South America v. Apthorpe.

¹ See *post*, p. 162.

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business unless the profits are received in England. If a person carries on one business in England, and another distinct business abroad, the two businesses must be looked at as separate businesses, and the person can only be assessed upon the profits of the business carried on abroad which he receives in this country. But where there is no business carried on solely abroad, but one business carried on in England, although a portion of the profits of that business is earned abroad by transactions carried out there, there is no rule that in such a case the profits must be received in this country before they can be assessed. *London Bank of Mexico and South America v. Apthorpe*, [1891] 1 Q. B. 383; 60 L. J., Q. B. 196; 64 L. T. 416; on appeal, [1891] 2 Q. B. 378; 39 W. R. 564.

**Case of
A.-G. v.
Black.**

Under the authority of certain Acts of Parliament a rate was levied on coals landed on the beach of, or in any other way brought or delivered within the limits of the town of, Brighton. The proceeds of the rate were applied to the purchase of land, the extension of the market, the enlargement of streets, the erection of a town hall, and to parochial purposes. The incidence of the tax was upon the importer of the coal, which was sold indiscriminately to persons not inhabitants of Brighton, and to non-rateable inhabitants of Brighton. It was not therefore a tax upon the inhabitants of Brighton,

or on those among them who were otherwise Chap. II.
rateable. It was held that the rate was a
“profit” within Schedule D. *Attorney-General*
v. Black, L. R., 6 Exch. 78, 308; 40 L. J. 89,
194; 24 L. T. 370; 25 L. T. 207; 19 W. R.
416, 1114.

The Corporation of the City of London derived Case of
a large annual income from profits of markets, *A.-G. v.*
corn and fruit metages, brokers’ rents, mayor’s
court and other fees, and from other sources.
The receipts were carried to a general account,
from which was deducted the whole expenditure
of the Corporation for the civil government of the
city, and the balance was returned as the profits
of the Corporation chargeable under Schedule D.
It was held that the profits derived by the Cor-
poration from the sources above mentioned were
liable to income tax under Schedule D. without
reference to the purposes for which they were
applied, and that the proper principle upon
which the assessment should be made was to take
each item, or head, of income separately, and to
assess the net produce of such item after deduct-
ing from the gross receipts the expenses incurred
in earning and collecting the same. *Attorney-*
General v. Scott, Chamberlain of the City of
London, 28 L. T. 302; 21 W. R. 265.

The Paddington Burial Board, formed in Case of
1853 under the provisions of 15 & 16 Vict. c. 85,
derived their sole income from payments made *Paddington*
Burial
Board v.
Inland
Revenue.

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in accordance with a scale of charges fixed under sect. 34 of that Act. By sect. 22 of the Act any surplus income in any year, after satisfying all liabilities, and providing such a balance as should be deemed by the Board sufficient to meet their probable liabilities during the then next year, was to be paid to the overseers in aid of the poor rate. It was held that the surplus income was profit chargeable with income tax, and that the case differed from that of the Glasgow Corporation Water Commissioners (*ante*, pp. 63, 64), inasmuch as in that case the inhabitants of Glasgow were not carrying on any business at all, and there was no profit made, the ratepayers paying only as much as it cost to supply them with water, neither more nor less; while in this case the burial board carried on the business of undertakers for the benefit of the ratepayers. *Paddington Burial Board v. Inland Revenue Commissioners*, 13 Q. B. D. 9; 53 L. J., Q. B. 224; 50 L. T. 211; 32 W. R. 551.

**Case of
*Partridge
v. Mallandaine.***

Professional bookmakers, who attend races, and carry on the business of betting, and make profits thereby, must pay income tax on such profits. *Partridge v. Mallandaine*, 18 Q. B. D. 276; 35 W. R. 276; 56 L. J. Q. B. 251; 56 L. T. 203. It was argued that the Legislature intended that income tax should be paid under Schedule D. only where some business recognized by the law was

carried on, and that this was not a lawful business. But Hawkins, J., said the calling was an honest one, and Denman, J., said that, in his opinion, if a man carried on a systematic business of receiving stolen goods, and made a profit of 2,000*l.* a year by it, the Income Tax Commissioners would be right in assessing him on it.

In the case of *Turner v. Cuxson* (22 Q. B. D. 151; 37 W. R. 254; 58 L. J., Q. B. 131; 60 L. T. 335) the question was raised whether a sum of 50*l.* paid to a curate of the Church of England, by way of an allowance from the Society of the Curates' Augmentation Fund, and which was not renewable save at the discretion of that Society, was assessable to income tax. It was held that it was not so assessable, inasmuch as the sum in question was a voluntary gift or gratuity, not derived from the employment or profession of the curate. It differed from payment made to a clergyman by parishioners in return for services rendered, which was the case in *The Board of Inland Revenue v. Strong* (15 Sco. L. R. 704; see *post*, p. 158), for it was not a payment made by parishioners, nor was it made in respect of his services in a particular parish, but it was given to him as being a poor and deserving clergyman.

Chap. II. *Classification of Sources from which Annual Profits or Gains chargeable under Schedule D. arise.*¹—The sources from which annual profits or gains chargeable under Schedule D. arise are divided into six classes; and for the case of each of those six classes there are provided special rules for ascertaining the duties payable; some of the rules being common to more than one of the classes. The classification, and the rules applicable to each class, are as follows:—

First Source.—The first source is ²every “art, mystery, adventure, or concern,” carried on by any “person, body politic or corporate, fraternity, fellowship, company, or society,” except “such adventures or concerns on or about lands, tenements, hereditaments, or heritages, as are mentioned in Schedule A.” The duty to be charged on annual profits or gains arising from this source is to be computed ³exclusively of the “profits or gains arising from lands, tenements, or hereditaments, occupied for the purpose of any trade, manufacture, adventure, or concern”; and ⁴on a sum not less than the full amount of the balance of such profits or gains, upon a fair and just average of three years ending on the day of the year immediately preceding the year of assessment on which the

¹ Where profits or gains may be charged under either of two or more sources or classes, the Crown may make the charge as may be most to its advantage. (*Scottish Mortgage Co. of New Mexico v. McKelvie*, see *post*, p. 160.)

² 5 & 6 Vict. c. 35, s. 100, second rule of first case.

³ *Ibid.*, second of rules applying to first and second cases.

⁴ *Ibid.*, first rule of first case.

accounts of the trade, &c., have been usually made up, or on the 5th day of April preceding the year of assessment. If the trade, &c., has been commenced within such period of three years, the duty is computed on the average of the balance of the profits and gains from the commencement of the trade, &c.; while, if it has been commenced within the year of assessment, the duty is computed according to the rule applicable in ¹the case of the sixth class. In ascertaining the profits ²the value of all doubtful debts due or owing to the person charged may be estimated; and in the case of the bankruptcy or insolvency of a debtor, the amount of the dividend which may reasonably be expected to be received on the debt due from him is to be deemed to be the value thereof.

First Source—Deductions allowed.—The deductions allowed in estimating the balance of profits and gains upon which duty is charged under Schedule D., and which arise from the first source, are for the most part indicated only by an enumeration of the deductions *not* allowed, which are as follows:—

1. ³No sum is to be deducted for repairs of premises, or for supply, repairs, or alterations of imple-

1. No deduction to be allowed for repairs of premises, supply or

¹ See *post*, pp. 162, 163.

² 16 & 17 Vict. c. 34, s. 50.

³ 5 & 6 Vict. c. 35, s. 100, third rule of first case. Here nothing is contemplated in the way of outlays of money in the shape of expenditure of capital for the future benefit of the estate, but only what may be called current expenditure. Per Grove, J., in *Gillatt and Watts v. Colquhoun*, 33 W. R. 258.

- Chap. II. ments, beyond the sum usually expended for such repairs of implements, beyond a three years' average;
2. Or on account of loss unconnected with the trade, &c.;
3. Or on account of capital withdrawn from the trade, &c.;
4. Or for capital employed in the trade, &c.;
5. Or for capital employed in improvement of premises;
6. Or for interest which might have been made;
7. Or for debts, except bad debts;
8. Or for average loss, beyond actual amount;
- ments, beyond the sum usually expended for such purposes according to an average of three years preceding the year of assessment.
2. ¹No sum is to be deducted on account of loss not connected with, or arising out of, the trade, &c., the profits or gains arising from which are the subject of charge.
3. ²No sum is to be deducted on account of any capital withdrawn from such trade, &c.
4. ²No sum is to be deducted for any sum employed as capital in such trade, &c.
5. ²No sum is to be deducted on account of any capital employed in improvement of premises occupied for the purposes of such trade, &c.
6. ²No sum is to be deducted on account of any interest which might have been made on such sum.
7. ²No sum is to be deducted for any debts, except bad debts, which must be proved to be such to the satisfaction of the Commissioners.
8. ²No sum is to be deducted for any average loss, beyond the actual amount of loss after adjustment.

¹ See *ante*, p. 125, note ³.

² 5 & 6 Vict. c. 35, s. 100, third rule of first case.

9. ¹No sum is to be deducted on account of any annual interest, or any annuity or other annual payment, payable out of profits or gains.

^{Chap. II.}
9. Or for
interest,
&c. ;

10. No sum is to be deducted for any sum recoverable under an insurance or contract of indemnity.

<sup>10. Or for
any sum
recover-
able under
insurance,
&c. ;</sup>

11. ²No sum is to be deducted for any disbursements or expenses whatever, not being money wholly and exclusively expended for the purposes of such trade, &c.

<sup>11. Or for
expenses
not being
money
wholly
employed
for the
purposes
of the
trade, &c. ;</sup>

12. ²No sum is to be deducted for any expenses of maintenance of the parties, their families, or establishments.

<sup>12. Or for
expenses
of main-
tenance
of the
parties ;</sup>

13. ²No sum is to be deducted for the rent or value of any dwelling-house, or domestic offices, or any part thereof respectively, ³except such part thereof as may be used for the purposes of such trade, &c.

<sup>13. Or for
the rent
or value
of any
dwelling-
house not
used for
purposes
of the
trade, &c. ;</sup>

14. ²No sum is to be deducted for any expenditure on any other domestic or private purposes distinct from the purposes of such trade, &c.

<sup>14. Or for
expendi-
ture on
private
purposes.</sup>

¹ 5 & 6 Vict. c. 35, s. 100, fourth rule of first case.

² 5 & 6 Vict. c. 35, s. 100, first rule applying to first and second cases. The deduction allowed does not include initial expenditure incurred by a person to enable him to enter a particular trade. *Dillon v. Corporation of Haverfordwest, ante*, pp. 66, 67.

³ See *post*, p. 130.

Chap. II. But ¹the deduction which is allowed in the case of Deduction allowed for—
 a concern chargeable under Schedule A. with reference to the rules of Schedule D. for the diminished value by reason of wear and tear of machinery or plant used for the purposes of the concern ²is allowed also in the case of any trade, &c., chargeable under Schedule D. And any person who has made insurance on his own life, or on the life of his wife, or who has contracted for any deferred annuity on his own life, or on the life of his wife, ³in or with any insurance company existing on the 1st November, 1844, or registered pursuant to the Act 7 & 8 Vict. c. 110, or ⁴under any Act passed in the session of Parliament of the 16th and 17th years of her Majesty, or ⁵in or with any friendly society legally established under any Act of Parliament 3. Deferred relating to friendly societies ; ⁶and any person who annuity. has contracted for any deferred annuity on his own life, or on the life of his wife, with the Commissioners for the Reduction of the National Debt ; ⁷and any person who under any Act of Parliament is liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to

¹ See *ante*, pp. 60, 75.

² 41 & 42 Vict. c. 15, s. 12. See the case of *The Caledonian Railway Co. v. Banks, post*, pp. 131, 132.

³ 16 & 17 Vict. c. 91.

⁴ 16 & 17 Vict. c. 34, s. 54.

⁵ 18 & 19 Vict. c. 35, s. 1.

⁶ 22 & 23 Vict. c. 18, s. 6.

⁷ 16 & 17 Vict. c. 34, s. 54.

secure a deferred annuity to his widow, or a provision to his children after his death, may deduct the amount of the annual premium paid by him for such insurance or contract, or the annual sum paid by him or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he is liable to be assessed under Schedule D.; and if he has been assessed, and has paid the duty, he may ¹ claim repayment. But ²the amount deducted, or repaid, is not to exceed one-sixth part of the whole profits and gains of the person claiming the allowance, and no such deduction entitles any person to claim exemption from duty on ³the ground that his annual profits and gains are thereby reduced below 150*l.* ⁴And any person carrying on, either solely or in partnership, two or more distinct trades, manufactures, adventures, or concerns in the nature of trade, the profits of which are ⁵chargeable under the rules of Schedule D., may deduct from, or set against, the

Amount deducted
not to exceed one-
sixth of
profits.

No de-
duction
entitles to
claim for
deduction
on account
of income
being less
than 150*l.*
a year.

Persons
carrying
on more
than one

¹ As to the mode of claiming and obtaining repayment, see *post*, pp. 271, 272, 294, 295.

² 16 & 17 Vict. c. 34, s. 54.

³ As to this ground of exemption, see *post*, pp. 170, 171.

⁴ 5 & 6 Vict. c. 35, s. 101.

⁵ The trades, &c. must be chargeable under the same schedule, so that where, before the passing of the "Customs and Inland Revenue Act, 1887" (*ante*, p. 90, note ¹), a seed merchant, who had taken a farm and worked it in connection with his seed business, claimed an allowance from the assessment on his profits as seed merchant in respect of losses on the farm, it was held that the claim could not be sustained.

Brown v. Watts, 23 Sco. L. R. 403.

Chap. II. profits acquired in one or more of the said concerns
 trade may set losses in one against profits in another.

profits acquired in one or more of the said concerns the excess of the loss sustained in any other of the said concerns over and above the profits thereof, in the same manner as a loss may be deducted from the profits of the same concern. And in such a case the person or persons carrying on the several concerns may make separate statements in respect of each. And any such person renting a dwelling-house, of which part is used by him for the purposes of any trade or concern, or any profession, the profits of which are chargeable with duty, may deduct from, or set off against, the profits of such trade, concern, or profession, such a sum not exceeding two-thirds of the rent *bona fide* paid by him for such dwelling-house as the Commissioners may on due consideration allow.

And persons renting dwelling-houses partly occupied for purposes of trade, &c., may deduct a sum not exceeding two-thirds of rent.

Case of the Birmingham Corporation.

Corpora-
tion of

The Corporation of Birmingham were assessed in respect of their market hall, fish market, vaults, and meat market, in sums amounting in the aggregate to 6,250*l.* They did not dispute this assessment, but alleged that they suffered losses in respect of the following concerns, viz. : utilisation and disposition of sewage, industrial schools, baths and parks, and that they were entitled, as persons carrying on more concerns than one, to set these losses against the profits arising from the market hall, fish market, vaults, and meat market. The Court, however, decided in favour of the surveyor of taxes, who contended on behalf of the Crown that the Corpora-

tion could not be considered to be persons carrying on trades or adventures, and that the concerns from which they derived no profits were part of the authorized and legitimate expenditure of the borough, provided for the benefit of the inhabitants, and that the losses incurred in connection with these last-mentioned concerns could not be set against the profits derived from the market hall, fish market, vaults, and meat market, which were applied in aid of the rates which the burgesses were called upon to pay. *In re Corporation of Birmingham* (un-reported).

The Caledonian Railway Company having been allowed deduction of all sums actually expended by them during the year in repairs and renewals of stock, claimed to deduct a sum of $4\frac{1}{2}$ per cent. on stock added during the preceding five and a-half years, such added stock not having been repaired (because until it had depreciated to the extent of 25 per cent. it would need no repairs, and it would not have depreciated to that extent until it had been in use five and a-half years), but depreciating in value at the rate of $4\frac{1}{2}$ per cent. a year. It was held that they were not entitled to make the deduction; that "diminished value" means value for the purpose for which the article was intended in a going concern, not for purpose of sale; and that the Commissioners

Birming-
ham not
to be con-
sidered
persons
carrying
on trades.

Case of
Caledonian
Rail. Co.
v. Banks.

"Dimi-
nished
value,"
meaning
of.

Chap. II.

had decided as a question of fact—from which decision there was no appeal—that there had been no such diminution of value; that the plant in question required no repairs to enable it to produce the same amount of income that it did at first; and that, in allowing a deduction of sums actually expended in repairs and renewals, the Commissioners had allowed the sum expended in maintaining the whole of the company's plant in good working order, which sum might fairly be regarded as making up the whole deterioration which the wear and tear of the year had occasioned. *Caledonian Railway Company v. Banks*, 18 Sco. L. R. 85.

Case of
Highland Rail. Co. v.
Balderston.

The Highland Railway Company, in making their return under the Income Tax Acts, claimed to deduct sums expended in improving a section of their line so as to bring it up to the standard of their main line, and in substituting heavy rails and chairs for lighter ones, on the ground that, although these sums had been charged against capital in the books of the company, they were properly chargeable against income. But it was held that the expenditure was not an expenditure for the maintenance of the line, but for altering the character of the line, and so a charge against capital, properly entered as such in the books of the company, and that the deduction could not be allowed. *Highland Rail. Co. v. Balderston*, 26 Sco. L. R. 657.

The Corporation of Newcastle-under-Lyme, *Chap. II.*
 under Parliamentary powers, purchased gas-
 works from a private company, understanding
 that the structural condition of the works was
 imperfect and defective, and that in the course
 of a few years a large outlay would have to be
 made to restore certain parts of the plant and
 apparatus. To meet this contingency the Cor-
 poration had set aside 500*l.* a year for five
 years. It was expected that the expenditure
 must of necessity take place within the next two
 or three years. A deduction had been made
 from the assessment upon the Corporation for
 the actual cost of all renewals, repairs, and
 maintenance of works for the year. The Cor-
 poration claimed a deduction in respect of the
 500*l.* appropriated yearly to the special deprecia-
 tion fund. It was held that they were not
 entitled to such deduction. *Clayton v. New-
 castle-under-Lyme Corporation* (unreported).

A company undertook to construct a railway
 in Brazil under a guarantee by the Government
 of Brazil of interest at the rate of 7 per cent.
 upon the money expended. The money was
 raised by debentures, upon which interest at the
 rate of $5\frac{1}{2}$ per cent. was paid, and the balance of
 the 7 per cent. interest paid by the Brazilian
 Government was applied to the formation of a
 sinking fund. It was argued that the trans-
 action amounted to a contribution by the

holders

Case of
*Blake v.
Imperial
Brazilian
Rail. Co.*

Excess of
guaranteed
interest
paid to a
company
over in-
terest
payable
by the
company
to its de-
benture

Chap. II.
 being applied to a sinking fund, cannot be considered as a contribution of capital by instalments.

Brazilian Government of capital in a number of annual payments, instead of in a lump sum, that the interest paid by the Brazilian Government was not, therefore, a profit or gain within the meaning of the Income Tax Acts, and that, although no question could arise as to the $5\frac{1}{2}$ per cent. interest payable to the debenture holders, from which income tax would be deducted by the company, a deduction should be made from the amount upon which the company should pay income tax of the difference between the $5\frac{1}{2}$ per cent. interest paid by the company to the debenture holders, and the 7 per cent. interest paid by the Brazilian Government to the company. But it was held that no such deduction could be allowed. *Blake v. Imperial Brazilian Rail. Co.* (unreported).

Case of
*Nizam's
 Guaranteed State
 Rail. Co.
 v. Wyatt.*

And in the case of *Nizam's Guaranteed State Rail. Co. v. Wyatt* (L. R., 2 Q. B. 548), the Nizam of Hyderabad guaranteed to the company for twenty years an annuity of 5 per cent. on their issued share and debenture capital, which annuity was to be applied in paying interest on such capital, and in forming a sinking fund for the redemption of the debentures, subject to provisions for repayment of the sum paid under the guarantee, with interest, out of profits earned. In the case of *Blake v. Imperial Brazilian Rail. Co.* (*ubi sup.*), the formation of the sinking fund had not been provided for by

agreement, but in the present case it was part ^{Chap. II.} of the agreement with the Nizam that the sinking fund for the redemption of the debenture capital should be formed in the manner stated. It was held that the whole of the annuity, including the sums applied to the sinking fund, was chargeable with income tax.

The Alexandria Water Company claimed a deduction in respect of interest payable to foreign debenture holders. It was held that the ^{Case of Alexandria Water Co. v. Musgrave.} deduction claimed could not be allowed, whether the income tax paid could be recovered from the foreign bondholders or not, being prohibited by sect. 100, rule 4. *Alexandria Water Company v. Musgrave*, 11 Q. B. D. 174; 52 L. J., Q. B. 349; 49 L. T. 287; 32 W. R. 146.

The directors of a fire insurance company claimed to make a deduction for "unearned premiums," or premiums the period of accruing of which was unexpired. They argued that, inasmuch as insurances were effected at all periods of the year, and the company's liabilities under the policies upon which those premiums were paid did not expire with the expiration of each year, the gross amount of premiums paid to the company in any one year ought not to be credited to them as profits actually realized in that year; that, in estimating their annual profits, the company were entitled to deduct from the gross amount of the premiums paid to ^{Case of Imperial Fire Assurance Co. v. Wilson. "Un-earned premiums," of fire insurance company.}

Chap. II.

them within the year, 33 per cent., in order to make fair allowance for the premiums so unearned at the expiration of the year, and to enter such percentage amongst the profits realized in the succeeding year; that, in estimating their annual profits, the company were entitled to deduct from the gross amount of premiums paid to them within the year, such a sum as it would cost to re-insure the premiums which had not been exhausted during the year.¹ It was held that the company were not entitled to make the deduction claimed. The Court recognized the impossibility of doing complete justice between the Crown and the company; but said the injustice upon the company was in fact confined to the first year, when they commenced business; for, as they went on year by year, the charge upon them, under the mode of assessment appealed against, would, taking the average, be right; and in the last year of the business sect. 134 of 5 & 6 Vict. c. 35 (see *post*, p. 164) afforded a means of remedying any overcharge. The 33 per cent. was an arbitrary figure. Huddleston, B., suggested that the company might have adopted another mode of keeping their accounts, viz.: by ascertaining what amount of each premium was applicable to the year

¹ See cases of *Scottish Union, &c. Company v. Smiles*, and *Northern Assurance Company v. Russell*, *post*, pp. 146, 147.

current at the time of payment, and what to the Chap. II.
 succeeding year, and then have carried out a
 figure which would really represent the amount
 applicable to the risks of the last-named year.
Imperial Fire Assurance Company v. Wilson, 35
 L. T. 271.

An insurance company carried on the business Case of
Last v.
London
Assurance
Corpora-
tion. of marine, fire, and life insurance. Its profits were derived from the following sources:—

(1) Interest on paid up capital and reserve fund; (2) profit on marine business; (3) profit on fire business; (4) profit on life business. As regarded the profits derived from the first source no question arose, inasmuch as income tax was levied and paid by deduction from the interest, and dividends, of the investments of the funds. These profits were, therefore, not included in the return made by the company. As regarded the other three sources of profit, the company contended that the results of the three branches of their business should be thrown into one general account, and that if, and so far as, the total sum on which they paid income tax in respect of their investments exceeded the sum total of the profits they made, they were not liable to be assessed under Schedule D. The Surveyor contended that, assuming the company to be right in their contention, that the three branches of their business should be brought into one account, the assessable profit of the life branch was not to be

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determined merely by the amount of profit available for division among the shareholders, but must be found by the third rule of the first case of Schedule D., and that, over and above the profit so appropriated to the shareholders, the accounts of the company showed (1) sums paid to policy-holders in the shape of bonuses, which was a distribution of assessable income or revenue; (2) additions made to the life fund, which was a transfer of income to capital. That, to arrive at the net balance of profit chargeable for the life branch under the above rule, account must be taken, on the one hand, of the life premiums received during the last three years, and on the other nothing must be allowed in the way of deduction beyond the claims actually paid under policies becoming payable in the same period, together with the expenses of managing the business; that the balance remaining would be the profit chargeable to the income tax for the life branch; and that this profit, added to the untaxed profit of the marine and fire branches, would represent the total liability of the company under Schedule D. In answer to the contention of the Surveyor, the company explained that in the life branch of their business there were three classes of policies, called respectively the "old," the "1831," and the "1846" series. The three classes were worked independently. As regarded the "old" series, any surplus which remained

after payment of policies belonged to the company for payment of expenses and profit. As regarded the "1831" and the "1846" series, by the terms of the contracts with the assured, the surplus which remained after payment of policies was dealt with as follows :—Two-thirds of the surplus were returned to the assured, who received payment, either by way of bonus, or by abatement of premium ; and the remaining third of the surplus went to the company, the balance of which, after payment of expenses, constituted the only profit of the company available for division among the shareholders. The question for the opinion of the Court was, whether or not, for the purposes of assessment to income tax, the contention of the company, that the results of the three branches of their business should be thrown into one account, was sound ; and upon what principle the profits of the life business should be calculated. It was held that the business of the company must be dealt with as a whole, and not as three separate businesses, although the accounts were naturally, as well as by compulsion of law, kept separate ; and that the amounts yearly transferred from income to the life fund were not part of the profits of the company, and were not, therefore, subject to income tax. As regarded the question whether the amount set aside for distribution among the bonus policy holders was part

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Difference
between
premiums
on fire
and life
insurance.

of the expenses of the business, or profits, the judges (Day and A. L. Smith, JJ.) differed. Day, J., holding that it was part of the expenses of the business and not profits, while A. L. Smith, J., held that it was profits. It was held that the case of the *Imperial Fire Assurance Co. v. Wilson* (*ubi sup.*) had no bearing upon the first question, inasmuch as¹ there was a radical difference between fire and life insurance; fire insurance premiums running out in all their incidents in one year, while in life insurance each premium has relation to the whole duration of the life or risk, and every year's premium has to be set aside and capitalised for payment of the future debt. *Last v. London Assurance Corporation*, 12 Q. B. D. 389; 53 L. J., Q. B. 325; 50 L. T. 534; 32 W. R. 702. On appeal, the judges were again divided upon the question whether the amount distributed amongst the bonus policy holders was expenses or profits, which was, in fact, the only question remaining to be decided. Brett, M. R., held that two sets of persons must be considered—the company, or, in other words, the shareholders, who carried on the business, and the customers, who were the assured. The taxable profits were, therefore, what the share-

¹ See *Scottish Union, &c. Co. v. Smiles*, and *Northern Assurance Co. v. Russell*, *post*, pp. 146, 147.

holders received, while what was distributed amongst the bonus policy holders was expenditure by which the profits were earned. Cotton, L. J., agreed with the Master of the Rolls, but Lindley, L. J., dissented, agreeing with A. L. Smith, J., in the Court below. The result was that the Court of Appeal affirmed the judgment of the Court below. (14 Q. B. D. 245; 54 L. J., Q. B. 4; 52 L. T. 604; 33 W. R. 207.) The case was carried to the House of Lords, where there was again a difference of opinion. Lord Blackburn, with whom Lord Fitzgerald agreed, held that the amount distributed amongst the bonus policy holders was not expenditure by which the shareholders earned the dividends payable to them, which alone were taxable profits, but that the bonus policy holders had in fact contracted for a share in the profits, and that the taxable profits included the amount divided amongst the bonus policy holders, as well as the amount paid in dividends to the shareholders. The case of the *Mersey Docks v. Lucas* (*ante*, pp. 60, 61) had decided that income tax was payable on profits, whatever the corporation earning the profits might be bound to do with them, and not only so, but the question was concluded by 5 & 6 Vict. c. 35, s. 54, which enacted that the estimate of the profits of a corporation should be made "before any dividend shall have been made thereof to

Chap. II.

Employers contract-
ing to pay
employed
a share of
profits—
Lord
Bram-
well's
opinion.
Co-ope-
rative
societies—
Lord
Bram-
well's
opinion.

Case of
Clerical,
Medical,
and Gene-
ral Life
Assurance
Society v.
Carter.

any other person having any share, right, or title in, or to, such profits." Lord Bramwell, however, dissented, and in the course of his judgment pointed out that, if the contention of the Crown was right, all that insurance offices would have to do would be to alter their language, but that income tax would be payable in all cases in which employers had agreed with employed that, besides fixed wages, the employed should receive what is called a share of profits. The income tax would apply to co-operative societies strictly so called, and be payable on a sum falsely called profits, with no deduction of the wages contingently payable to workmen if gross profits enabled them to be paid. In the result, the judgment of the Court of Appeal (which had affirmed that of the Court below) was reversed. (L. R., 10 App. 438.)

In the case of *Last v. London Assurance Corporation* (*supra*), it was assumed that the corporation was entitled to credit for income tax paid at the source on interest on investments, and, in the form of return after the final judgment in the House of Lords agreed upon between the Board of Inland Revenue and the corporation, the corporation were credited with taxed interest accordingly. But, although the account was adjusted on this basis, the case did not expressly decide whether, where interest on the investments of a life insurance society has not been

taxed at the source, but paid in full, the Crown Chap. II. is entitled to charge income tax upon it, although the taxed interest paid at the source exceeds the sum which would be payable on trade profits. This latter question was raised in the case of the *Clerical, Medical, and General Life Assurance Society v. Carter* (21 Q. B. D. 339; 37 W. R. 124; 57 L. J., Q. B. 614; 59 L. T. 827), and was decided by the Queen's Bench Division in the affirmative, and the decision was affirmed on appeal. 21 Q. B. D. 444; 37 W. R. 346; 58 L. J., Q. B. 224.)

The Gresham Life Assurance Society sold Case of
Gresham
Life As-
surance
Society v.
Styles. annuities, the consideration being a lump sum paid down in the case of an immediate annuity, and either a lump sum, or a series of periodical premiums, in the case of a contingent, or deferred, annuity. The annuity obligations of the Society were in many instances dischargeable abroad. The Society claimed to deduct from its gross income the sums paid in discharge of its annuity obligations. The Queen's Bench Division held that the Society was not entitled to make the deduction, that the annuities were payable out of profits and gains—profits and gains meaning not strictly net profits, but such sums received as a merchant would bring into his account, and it having been the intention of the Legislature to give to the revenue the benefit of taxing, upon the first possible occasion of

Chap. II.

taxation, any moneys which were taxable. The Court held, however, that the Society would be entitled to deduct from the annuities the proper income tax thereon under sect. 102 of the ¹Income Tax Act, 1842. On appeal, this decision was affirmed, and it was held that the deduction claimed was prohibited by Schedule D., r. 4, of the ¹Income Tax Act, 1842, and ²sect. 102 of the same Act, but for which prohibition the deduction might have been made. The Court of Appeal also held that the case was governed by the rule of construction laid down in ³*Alexandria Water Co. v. Musgrave*. But on appeal to the House of Lords, it was held that the Society ought not to be assessed upon the amount paid by it for the annuities, that the deduction prohibited by rule 4 of Schedule D. was a deduction on account of an annuity or annual payment made out of profits and gains, and that gross receipts were not to be treated as profits without regard to the payments to which, in consideration of those receipts, the Society had bound themselves. The rule was primarily designed to meet such a case as that in which a trader had contracted to make an annual payment out of his profits, as, for example, when he had agreed to make such a payment to a

¹ 5 & 6 Vict. c. 35. As to Schedule D. r. 4, see *ante*, p. 127.

² See *post*, pp. 157, 158, 249—251.

³ See *ante*, p. 135.

former partner, or to a person who had agreed ^{Chap. II.} to make a loan on the terms of receiving such payment. The language of the 4th rule, when read in connection with sect. ¹102 of the ²Income Tax Act, 1842, showed that the rule only related to annuities payable out of profits and gains "brought into charge" by virtue of the Act, and the conclusion was not invalidated by the fact that in the Act—for instance, in the 3rd rule of schedule D.—the words "profits and gains" were not always used in their proper or ordinary sense. The decision in ³*Alexandria Water Co. v. Musgrave* was right upon the facts of that case, the claim there being a claim to deduct the company's debts for borrowed capital, and to diminish the amount of the profits of the trading, but it did not govern ⁴the present case. Sect. 102 of the ⁵Income Tax Act, 1842, and sect. 40 of the ⁶Income Tax Act, 1853, had no bearing upon the question. *Gresham Life Assurance Society v. Styles*, (in Queen's Bench Division) 24 Q. B. D. 500; 38 W. R. 480; 62 L. T. 464; (in Court of Appeal) 25

¹ See *post*, pp. 157, 158, 249—251.

² 5 & 6 Vict. c. 35.

³ *Ante*, p. 135.

⁴ The case arose before the passing of the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8). See *post*, p. 250, as to sect. 24 of this Act.

⁵ 5 & 6 Vict. c. 35.

⁶ 16 & 17 Vict. c. 34. See *post*, pp. 198, 199, as to sect. 40.

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Q. B. D. 351; 38 W. R. 696; (in House of Lords) 41 W. R. 270.

Cases of
Scottish Union, &c.
Co. v.
Smiles, and
Northern Assurance Co. v.
Russell.

1. Profits of fire insurance and life insurance to be reckoned as one undivided income.

2. Interest of investments from which tax has not been deducted at the source to be reckoned as profit.

3. Mode of ascertaining profits of fire insurance.

4. Mode of ascertaining profits

In the cases of the *Scottish Union and National Insurance Co. v. Smiles*, and the *Northern Assurance Co. v. Russell* (26 Sco. L. R. 330), the following instructions were given by the Court:—

1. In assessing to the Income Tax the gains of a Company carrying on the businesses both of fire insurance and life insurance, the net profits and gains from the two branches of the business must be massed together as one undivided income, assessable according to the rules applicable to the first case under Schedule D.

2. The interest of investments which has not suffered deduction of income tax at its source must be taken into account in ascertaining the assessable amount of profits and gains of the Company.

3. Seeing that fire insurance policies are contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be fairly taken as profits and gains of the Company, without taking into account, or making any allowance for, the balance of annual risks unexpired at the end of the financial year of the Company.

4. But this rule is not applicable to the ascertainment of profits and gains upon "life" busi-

ness. Life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The profits and gains can be ascertained only by actuarial calculation.

5. Where the gain is made by the Company (within the year of assessment, or the three years prescribed by the Income Tax Act, Schedule D.) by realising an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the Company.

Where a company, to extend its business, opened a manufactory and fitted machinery, but subsequently closed it, removed a portion of the machinery, and re-opened the manufactory on a smaller scale, and thereby lost a portion of the original expenditure, it was held that this was a loss of capital, and that no deduction could be allowed in respect of such loss. *Smith v. Westinghouse Brake Co.* (unreported).

A company carrying on the business of iron-founders claimed to deduct from the sum shown in their own report as net profits a sum which they had written off under a provision in their articles of association to form a reserve fund for the purpose of "meeting contingencies, or of purchasing, improving, enlarging, rebuilding, restoring, reinstating, or maintaining the works, plant, and other premises, or property, of the company." The company had deducted a certain sum for repairs, and the deduction had been

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allowed. It was held that they were not entitled to make the deduction claimed. ¹*Forder v. Handyside*, L. R., 1 Ex. D. 233; 35 L. T. 62; 24 W. R. 764.

Case of
Gillatt &
Watts v.
Colquhoun.

Messrs. Gillatt & Watts paid a premium of 34,000*l.* for the lease of the house in which they carried on their business, and a rent of 250*l.* a year. The house was assessed to the income tax under Schedule A., at an annual value of 1,000*l.* Messrs. Gillatt & Watts contended that in making their returns for assessment under Schedule D. they were entitled to treat the 34,000*l.* paid in the first year as an actual expenditure in that year, so that, if they did not make any more than 34,000*l.*, they would have no income tax to pay at all, and that, the lease being for twenty-two years, they had a right to deduct in each year one twenty-second part of the 34,000*l.*, because the lease would diminish in value as every year was cut off from it. It was held that the principle contended for was

¹ The case of *Forder v. Handyside* was decided in the year 1876, before the passing of 41 & 42 Vict. c. 15, s. 12 (*ante*, pp. 60, 75), which permitted an allowance to be made in respect of depreciation of machinery. The case is referred to by A. L. Smith, J., in the course of his judgment in *Gillatt and Watts v. Colquhoun* (*infra*), as showing that the balance-sheet to be made out to show what profit a trader has made under Schedule D. is not to be worked out in the same way that the trader would make out his balance-sheet for his own information showing what profit or loss he has made.

wrong; that the right principle was, taking the premium into consideration, and the rent, to take what an actuary would put as the fair rent for the lease for the time over which the lease extended—that is, supposing no premium had been paid. It was found that the actual premium was not a fair premium, but one much too large, and, the case stated containing a finding that, the premises in question being assessed under Schedule A. at the sum of 1,000*l.*, that was, for the purposes of the case, to be taken as the “annual value” of the premises, the judges intimated that that should be taken as the fair rent the deduction of which should be allowed. ¹*Gillatt and Watts v. Colquhoun*, 33 W. R. 258.

¹ It may be gathered, from the observations of A. L. Smith, J., in delivering judgment in this case, that a freeholder carrying on his trade upon his own premises, would be entitled, in making his return of profits under Schedule D., to deduct a sum which would represent a fair rent for the premises. It will be remembered that special provision is made for the case of a person renting a dwelling-house of which part is used by him for the purpose of any trade or concern, enabling such person to make a deduction of so much, not exceeding two-thirds, of the rent paid by him as the Commissioners allow. (*Ante*, pp. 127, 130.) This provision seems intended to meet the case where the trader lives upon premises which he has hired, and carries on his trade there also, so that the premises are part dwelling-house, and part place of business. But where the owner of premises uses them solely for the purposes of the trade or concern which he carries on there, it would seem that he is entitled to deduct a fair rent.

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Case of
*Watney v.
Musgrave.*

Adver-
tisements,
cost of.

Nothing is to be deducted which is not strictly part of the costs and expenses incurred in production. Therefore, although a brewer is entitled to deduct the annual cost of the buildings in which the beer is manufactured, the cost of the raw material used in the manufacture of beer, and the wages of the persons employed in the manufacture, and, it may be, under some circumstances, the cost of conveying the beer to the consumer, he is not entitled to deduct anything on account of premiums paid by him for leases of public-houses which he lets to tenants, whom he places under covenants to buy beer of him, any more than, if he chose to give dinners to publicans, and they said in return "We will buy a quantity of beer from you," he would be entitled to deduct the cost of the dinners; or than he would be entitled to deduct ¹the costs of

¹ As to the question whether the cost of advertisements may be deducted, the following observations were made by Grove, J., by way of illustration, in the course of his judgment in *Gillatt and Watts v. Colquhoun* (*ubi sup.*): "I may mention advertisements as one class of outlay, and in one case that was mentioned it was said to be a matter which ought to be deducted. No doubt it would be a most difficult question to settle, because it may differ in different trades. Some trades possibly may be founded very much upon advertisements; and there may be a trade of advertising which is founded upon the value of such advertisements. It is a question of degree, and I do not at present go the length of saying that in no case can advertisements ever be deducted."

advertisements by which he increased the sale ^{Chap. II.} of his beer. *Watney v. Musgrave*, L. R., 5 Ex. D. 241; 49 L. J., Ex. 493; 42 L. T. 690; 28 W. R. 491.

The decision in the above-mentioned case of *Watney v. Musgrave* was held to be one affecting <sup>Case of
Reid's
Brewery
Co. v.
Neale.</sup> investment of capital, and therefore to be confined to the case itself, and inapplicable as a guide in a case where a firm of brewers carried on, in connection with their brewery business, a business of banking and money lending, confined to the customers of the firm, and ancillary to their business as brewers. The capital used by the firm in the banking and money lending business was held to be used only in the sense that all money which is laid out by persons who are traders is used; it was not invested in the ordinary sense of the word. If the firm had carried on two businesses, they would have been entitled under ¹ sect. 101 of 5 & 6 Vict. c. 35 to set off a loss sustained in one business against a profit made in the other, but as they carried on not two businesses but one business, they were entitled to write off, by way of deduction from their taxable profits, such losses as they had sustained in the debts of the branch of the brewing business relating to loans and advances. *Reid's Brewery Co. v. Neale*, [1891] 2 Q. B. 1; 39

¹ See *ante*, pp. 129, 130.

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W. R. 459 ; 60 L. J., Q. B. 340 ; 60 L. T. 294.

Case of
*Russell v.
Aberdeen
Town and
County
Bank.*

The Aberdeen Town and County Bank owned a building in which its business was carried on, and in which there was also accommodation provided for managers and agents of the Bank, who occupied portions of the building as their residences. The question raised was whether the Bank was entitled to deduct from its profits, before returning them for assessment under Schedule D., the whole value of their Bank premises, where such premises were in part occupied for residence by officers of the Bank. The Court of Exchequer (Scotland) decided that the Bank were entitled to make the deduction, and on appeal to the House of Lords the judgment was upheld. Lord Herschell said it was not disputed that the ¹ annual value of premises exclusively used for business purposes is properly to be deducted in arriving at the balance of profits and gains. Probably this deduction was allowed because it was an essential element to be taken into account in ascertaining the amount of the balance of profits. For, if not, it could only be included by a

¹ It is believed that no difficulty will be made in allowing a deduction on account of annual value (which would be taxed under Schedule A.) of business premises owned by the person carrying on the business, whether such premises consist of land or buildings, although there may be, perhaps, some difficulty in pointing out how the right to such deduction is conferred. See *ante*, p. 149, note ¹.

very broad extension of the terms actually used, Chap. II. as being a disbursement or expense, which is money wholly and exclusively laid out or expended for the purpose of the trade. But it was admitted, and, he thought, it must have been admitted, that in one way or another the deduction would have to be made. If the annual value of the premises belonging to the Bank, used for the purposes of their business, had to be deducted, there was no reason why any deduction should be made from that amount on account of the fact that the manager of the Bank for purposes of the business, or as part of his emolument (it mattered not which), occupied a portion of the Bank premises. And it made no difference whether the Bank manager would, or would not, be liable to income tax in respect of the value of his residence as part of the emoluments of his employment. *Russell v. Aberdeen and County Bank*, 13 App. Cas. 418.

Where a company borrowed money to be employed in its business, and covenanted to pay annual interest thereon, and to repay the capital with an additional bonus of 10 per cent., it was held that the bonus paid could not be claimed as a deduction. *Arizona Copper Co. v. Smiles*, 29 Sco. L. R. 134.

Second Source.—The second source from which the annual profits or gains chargeable under Schedule D.

Chap. II. arise¹ is “professions, employments, or vocations, not contained in any other schedule;” and “employment” extends to every employment by retainer in any character whatever, whether such retainer shall be annual or for a longer or shorter period, “and all profits and earnings of whatever value.”² The duty to be charged on annual profits or gains arising from this source is, like that on the annual profits or gains arising from the first source, to be computed exclusively of the profits of lands, and³ on an average of profits of three years.⁴ Friendly societies legally established, and so conducting their business as not to debar themselves from the benefit of the⁵ exemption under Schedule C., are exempted from liability to be charged under Schedule D., as under Schedule C. In ascertaining the profits,⁶ doubtful debts may be estimated, as in the case of profits arising from the first source.

*Second Source—Deductions allowed.—*⁷ The deductions allowed in estimating the balance of profits and gains upon which duty is charged under Schedule D.,

¹ 5 & 6 Vict. c. 35, s. 100, second case, and first rule of second case.

² 5 & 6 Vict. c. 35, s. 100, second rule of rules applying to first and second cases.

³ 16 & 17 Vict. c. 34, s. 48.

⁴ 16 & 17 Vict. c. 34, s. 49.

⁵ See *ante*, p. 98.

⁶ 16 & 17 Vict. c. 34, s. 50. See *ante*, p. 125.

⁷ 5 & 6 Vict. c. 35, s. 100, rules applying to first and second cases.

and which arise from the second source, are again, Chap. II. except in the case of deduction on account of life insurance or deferred annuity, generally only negatively indicated by a reference to deductions *not* allowed, which are the same, so far as the change of subject will permit, as those allowed in the case of profits arising from the first source; "profession, employment, or vocation," being substituted for "trade, manufacture, adventure, or concern."¹ In addition, however, to such deductions as are generally allowed, there is one positively permitted in the case of a clergyman, or minister, of any religious denomination, who is allowed to deduct from the profits, fees, or emoluments of his profession, any expenses incurred by him wholly, exclusively, and necessarily, in the performance of his duty or function as such

¹ 16 & 17 Vict. c. 34, s. 52. The words "profits, fees, and emoluments of his profession," would seem to confine the operation of this provision to cases in which the clergyman, or minister, is chargeable under Schedule D. But inasmuch as the section commences with the words "In assessing the duty chargeable *under any schedule of this Act* upon any clergyman, or minister," we must assume, unless the words italicised have no meaning, that the deduction would be allowed in cases where the clergyman, or minister, is chargeable under Schedules A., B., C., or E., provided only that he enjoys that in respect of which he is charged as professional emolument. A voluntary contribution made by a clergyman towards the stipend of an assistant, is not an allowable deduction under this section, which applies to expenses incurred by the clergyman in the personal performance of the duties of his office. *Lothian v. Macrae*, 22 Sco. L. R. 219.

Chap. II. clergyman or minister. ¹A deduction is also allowed in respect of the rent of a dwelling-house, part of which is occupied for the purposes of a profession, the profits of which are chargeable under Schedule D.

Third Source.—²The third source can only be circuitously described. It is a source from which arise “profits of an uncertain annual value not charged in Schedule A.” From the provisions which follow we may gather that the kind of profits intended are profits on securities bearing interest payable out of the public revenue (except ³securities charged under Schedule C.), discounts, and interest of money not annual interest, and the profits arising from such trades as those of dealers in cattle and sellers of milk, who are concerned in an indirect way with land, but whose profits cannot be accurately estimated by the rent they pay for land in their occupation. The duty is charged upon the full amount of the profits or gains within the preceding year, ending on the day of the year immediately preceding the year of assessment, on which the accounts of the business (if profits of a business are in question) have been usually made up, or on the 5th day of April preceding the year of assessment.

Land occupied by a dealer in

¹ See *ante*, pp. 127, 130.

² 5 & 6 Vict. c. 35, s. 100, third case. See *post*, pp. 222, 223.

³ As to these securities, see *ante*, pp. 97, 98.

has been estimated or charged on the rent or annual value, but is not sufficient for the keep and sustenance of the cattle brought on the land, so that the rent or annual value of the land cannot afford a just estimate of the profits of such dealer, a return of such profits is required, and such further sum must be charged thereon as, together with the charge in respect of the occupation of the land, makes up the full sum where-with such trader ought to be charged. The same deduction on account of life insurance, or purchase of deferred annuity, is allowed as ¹in the case of profits and gains arising from the first source. ²All annuities, yearly interest of money, or other annual payments charged on any property of the person

¹ See *ante*, pp. 128, 129.

² 5 & 6 Vict. c. 35, s. 102. The practical effect of this provision is, however, confined to cases in which the annual payment is, by reason of the same being charged on property in any of her Majesty's dominions abroad, or on any foreign property, or foreign security, or otherwise, received without any deduction of duty being made by the person liable to make such payment (see *post*, pp. 197—201), or where any such payment is made from profits or gains not charged by the Income Tax Acts, or where any interest of money is not reserved, or charged, or payable, for the period of one year. In the case of the *Gresham Life Assurance Society v. Styles* (see *ante*, p. 143) it was held by the Queen's Bench Division, and by the Court of Appeal, that this section authorized a society which sold annuities to deduct income tax from the annuities paid. But the House of Lords decided that the section had no such application. Such deduction may, however, now be made under sect. 24 of the "Customs and Inland Revenue Act, 1888" (51 Vict. c. 8). See p. 250.

Chap. II. paying the same, or payable by virtue of any contract, are also charged with duty under the provisions applicable to the third case of Schedule D.

Case of
Strong.
Gift of
money
raised by
voluntary
subscrip-
tion.

A gift of money raised by voluntary subscription and made annually to a minister of religion by his congregation is assessable—the annual gift being either "gain" under Schedule D., or "emolument"¹ under Schedule E. *In re George Walter Strong*, 15 Sco. L. R. 704. But a sum paid to a clergyman by way of allowance by a charitable society, not renewable save at the discretion of the society, and paid to the clergyman, not in respect of his services, but as being poor and deserving, is not assessable. *Turner v. Cuxson*, 22 Q. B. D. 151; 37 W. R. 254; 58 L. J., Q. B. 131; 60 L. T. 335; *ante*, p. 123.

Fourth Source.—² The fourth source is securities in what are called in the ³Income Tax Act, 1842, "the British Plantations in America," or in any other of her Majesty's dominions out of Great Britain, and foreign securities, from which interest arises, except ⁴such annuities, dividends, and shares as are charged under Schedule C. ⁵It includes dividends, and shares of annuities, payable out of the revenue of any foreign state, and interest, dividends, or other annual

¹ As to Schedule E., see *post*, p. 166.

² 5 & 6 Vict. c. 35, s. 100, fourth case.

³ 5 & 6 Vict. c. 35.

⁴ As to these annuities, &c., see *ante*, pp. 97—101.

⁵ 5 & 6 Vict. c. 80, s. 2, and 16 & 17 Vict. c. 34, s. 10.

payments, payable out of, or in respect of, the stocks, ^{Chap. II.} funds, or shares of any foreign, or ¹colonial, company, society, adventure, or concern, or in respect of any securities given by, or on account of, any such company, &c., and ²all annuities, pensions, or other annual sums, payable out of the funds of any institution in India, which have been intrusted to any person, corporation, company, or society in the United Kingdom, for payment to any person, corporation, company, or society, in the United Kingdom. The same deduction on account of life insurance, or purchase of deferred annuity, is allowed as ³in the case of profits and gains arising from the first source.

A company formed for the purpose of borrowing money in this country and investing it abroad at higher rates of interest, were charged upon interest of money lent by them on the security of property in the United States of America, a deduction being made of the expenses of management in America (which could not have been received in this country as part of the income derived from foreign securities, and was, therefore, rightly deducted), and expenses

*Case of
Scottish
Mortgage
Co. of New
Mexico v.
McKelvie.*

¹ 24 & 25 Vict. c. 91, s. 36 (the phrase "person entrusted with payment" in this section, has the same extent of meaning as in sect. 96 of 5 & 6 Vict. c. 35, as to which see *post*, p. 219, note ³); 48 & 49 Vict. c. 51, s. 26.

² 31 & 32 Vict. c. 28, s. 5.

³ See *ante*, p. 128.

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of management in this country (which, whether rightly deducted or not, was allowed as a deduction by the Inland Revenue). The interest received by the company's agents in America was periodically brought into account in the books of the company kept at the head office in Glasgow, but of the funds raised by the company in this country there was retained a sum equivalent to the interest or gain realized from the American securities after defraying the working expenses in America, and out of this sum was paid all the working expenses in Great Britain, the interest to debenture holders and depositors, and a dividend at the rate of 7 per cent. to the shareholders. The company contended that under these circumstances the interest or gain realized from the American securities was not brought into this country, and therefore not chargeable. But it was held that the sum retained out of the funds raised in this country (the above-mentioned deductions being made) had been, in the process of book-keeping, converted into income (for otherwise the payments made out of it, which were clearly payments to be made out of income, would have been illegal), and that the company had been rightly charged. It was held that the company were rightly charged under the fourth case, and that though they might have been charged under the first case, where a charge might be made under

either of two cases, the Crown was entitled to *Chap. II.*
 charge under that case which was most to its
 advantage. (*Scottish Mortgage Co. of New Mexico*
v. McKelvie, 24 Sco. L. R. 87; and see *Smiles v. Northern Investment Co. of New Zealand*, 24 Sco. L. R. 530.)

The Australasian Mortgage and Agency Company carried on an extensive and miscellaneous business in connection with the Australian colonies. The company were first of all wool-brokers, and they acted as parties both to buy and to sell wool, and they advanced money on the security of the goods in which they dealt, and they received a commission for their agency. Their trade was partly the trade of a broker and partly the trade of a banker, although they did not call themselves bankers. The advances made by them were made on second mortgages over real property in the colonies, and on liens and charges upon stock, wool, and other produce, and on the security of shipments of wool and other produce, some of which might be in warehouse in Australia, some in course of transit to this country, and some in warehouse in London. The advances were in the nature of bankers' advances or loans, the amounts of which fluctuate from time to time according as produce is realized or other payments are made. The company had its registered office in Scotland. It was sought to charge the company

Case of Smiles v. Northern Investment Co. of New Zealand.
Case of Smiles v. Australasian Mortgage and Agency Co.

Chap. II.

upon the profits of a part of their business as if those profits were interest arising from securities in the colonies, so far as those profits were received in this country, under the fourth case of Schedule D. But it was held that that part of the business of the company which it was sought so to charge was proper trading, and not an investment of money upon securities, and that the company were chargeable under the first, and not under the fourth case of Schedule D. The case was distinguishable from the cases of the *Scottish Mortgage Co. v. McKelvie*, and *Smiles v. Northern Investment Co.* (*ubi sup.*). (*Smiles v. Australasian Mortgage and Agency Co.*, 25 Sco. L. R. 645.)

Fifth Source.—¹ The fifth source is possessions in the “British Plantations in America,” or in any other of her Majesty’s dominions out of Great Britain, and foreign possessions. The duty is charged upon the actual annual sums received in Great Britain upon an average of three preceding years, allowing such deductions only ² as in the case of profits arising from the first source.

Sixth Source.—³ The sixth source is such as produces annual profits or gains not falling under any

¹ 5 & 6 Vict. c. 35, s. 100, fifth case. As to the meaning of “possessions,” see the case of *Colquhoun v. Brooks, ante*, pp. 117, 118.

² See *ante*, pp. 125 *et seq.*

³ 5 & 6 Vict. c. 35, s. 100, sixth case.

of the preceding cases, and not charged by virtue of Chap. II.
any other schedule. The duty is charged on the amount of the value of the profits and gains received annually, or according to an average of such period, greater or less than one year, as the case may require, and as shall be allowed by the Commissioners. The same deduction on account of life insurance, and purchase of deferred annuity, is allowed as ¹ in the case of profits and gains arising from the first source.

Exemption from Duty and Abatement under Schedule D.—² Friendly societies legally established, and not assuring to any individual any sum which would debar such society from the benefit of the exemption granted to friendly societies by 5 & 6 Vict. c. 35, in respect of their stocks, &c., chargeable under Schedule C., are exempted from the duty chargeable under Schedule D. ³ Trade unions duly registered under the ⁴ Trade Union Acts, 1871 and 1876, and the rules of which limit the amount assured to any member, or person nominated by or claiming under him, to a total sum not exceeding 200*l.*, and the amount of any annuity granted to any member or person nominated by him to a yearly sum not exceeding 30*l.*, are

¹ See *ante*, pp. 128, 129.

² 16 & 17 Vict. c. 34, s. 49. As to the exemption under Schedule C, see *ante*, p. 98.

³ Trade Union (Provident Funds) Act, 1893 (56 Vict. c. 2, s. 1).

⁴ 34 & 35 Vict. c. 31; 39 & 40 Vict. c. 22.

Chap. II. exempt from income tax chargeable under Schedule D., in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of ¹provident benefits. ²A person whose income is less than 150*l.* a year is exempted from payment of income tax; and a person whose income, though exceeding 150*l.* a year, is less than 400*l.* a year, is entitled to an abatement in respect of 120*l.* of his income. The mode in which such exemption and abatement respectively may be claimed and allowed will be described ³later on. ⁴Abatements may be claimed on account of diminution of profits and gains within the year current at the time of making the assessment, which reduces the profits and gains for that year below the sum at which they were computed, and also in case the person charged ceases to carry on trade, or dies, before the end of such year. ⁵And when a person sustains a loss in any trade, manufacture, adventure, or concern, or profession, employment, or vocation, carried on by him either solely or in partnership, he may obtain an adjustment of his liability by reference to the loss and to the aggregate amount of his income for the

¹ As to what are "provident benefits," see *ante*, p. 86.

² 39 & 40 Vict. c. 16, s. 8.

³ See *post*, pp. 265—271, 294.

⁴ 5 & 6 Vict. c. 35, ss. 133, 134. As to the mode in which such abatements are claimed and made, see *post*, pp. 303—306.

⁵ 53 & 54 Vict. c. 8, s. 23. As to the mode in which the relief is claimed and made, and the time within which the claim must be made, see *post*, pp. 305, 306.

year, estimated according to the several rules and ^{Chap. II.} directions of the Income Tax Acts. But if he avails himself of this relief, he will not be entitled to claim, or be allowed a deduction on the assessment for a subsequent year by reference to the amount of the loss in respect of which he has obtained relief.

In the case of *Tennant v. Smith* ([1892] A. C. ^{Case of} *Tennant* 150; 61 L. J., P. C. 11; 66 L. T. 327) it was *v. Smith.* held that an agent for a bank, who was bound, as part of his duty, to occupy the bank house as custodian of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours; who was not entitled to sub-let the bank house, or to use it for other than bank business; and who, in the event of his ceasing to hold his office, was under obligation to quit the premises forthwith; claiming abatement on the ground that his total income from all sources was less than 400*l.*, cannot be compelled to bring into account the yearly value of his privilege of free residence in the bank premises.

Doubtful Debts may be valued.—¹ In ascertaining the profits of any person chargeable under Schedule D., the value of all doubtful debts due or owing to the person who is to be charged may be estimated, and in the case of the bankruptcy, or insolvency, of the debtor, the amount of the dividend which may

¹ 16 & 17 Vict. c. 34, s. 50.

Chap. II. reasonably be expected to be received on any debt due from him is to be deemed the value thereof.

SECTION V.—SCHEDULE E.

Public Offices, &c.—Under Schedule E. the duty is charged¹ “for, and in respect of, every public office or employment of profit, and upon every annuity, pension, or stipend, payable by her Majesty, or out of the public revenue of the United Kingdom, except² annuities charged to the duties under Schedule C.,” for every³ twenty shillings of the annual amount thereof. ⁴The following is an enumeration of the “public offices and employments of profit,” upon which the duty is charged for all “salaries, fees, wages, perquisites, or profits,” accruing therefrom, under Schedule E., viz.:—

- Offices:—*
- 1. Of Parliament. Any office belonging to either House of Parliament.
 - 2. Of Courts of justice. Any office belonging to any Court of justice.
 - 3. Of civil service. Any public office held under the civil government of her Majesty, or in any county palatine, or the Duchy of Cornwall.

¹ 16 & 17 Vict. c. 34, s. 2.

² As to these annuities, see *ante*, pp. 97 *et seq.*

³ Fractional parts of 20s. are charged with duty by the Act 16 & 17 Vict. c. 34, s. 3; but no duty is charged of a lower denomination than 1d.

⁴ 5 & 6 Vict. c. 35, s. 146, r. 3.

4. Army, navy, &c. The office of any commissioned officer in the army or navy, or in the militia or volunteers. Chap. II.
4. Of army,
navy, &c.
5. Ecclesiastical. Any office held under any ecclesiastical body. 5. Ecclesiastical.
6. Public corporations, &c. ¹Any office held under any public corporation, or under any company or society. 6. Of public corporations,
companies or societies.
7. Public institutions. Any office under any public institution, or in any public foundation. 7. Of public institutions.
8. County, municipal, &c. Any office in any county, city, town, or place. 8. County,
municipal,
&c.
9. General. Every other public office or employment of profit of a public nature. 9. Generally.

The profits ²may be estimated either on the profits of the preceding year, or on the fair average of one year of the amount of the profits in the three years preceding, such years in each case ending on the 5th day of April in each year, or on the other day of each year on which the accounts of such profits have been usually made up. And in estimating the profits the following deductions may be made, viz. :—

1. ³The amount of duties, or other sums, payable or chargeable on the same, by any Act of Parliament, First deduction:
Duties,

¹ Including offices, and employments of profit held in, or under, any railway company. See 23 & 24 Vict. c. 14, s. 6.

² 5 & 6 Vict. c. 35, s. 146, fourth rule.

³ 5 & 6 Vict. c. 35, s. 146, first rule.

Chap. II. where such duties, &c., have been actually paid by
&c. payable by
Act of Parliament. the person charged.

Second deduction:
Official deduc-

Third deduc-
Expenses of travel-
ling and keeping a
horse.

Case of
Bowers v.
Harding.

2. ¹All official deductions and payments made upon the receipt of the salaries, fees, wages, perquisites, and profits.

3. ²The expenses of travelling in performance of the duties of the office or employment, necessarily incurred, or of keeping a horse necessary for the fulfilment of such duties, actually defrayed out of the emoluments of the office or employment, and money otherwise necessarily and actually expended in the performance of such duties.

An assessment was made upon George Harding under Schedule E. in respect of his office of national schoolmaster, and ³of the office of national schoolmistress held by his wife, for which they received a joint salary of 150*l.* a year, and also of Harding's office of choirmaster, for which he received 10*l.* a year. He claimed a deduction of 30*l.* a year, in respect of expenses incurred by him in keeping a servant, in order

¹ 5 & 6 Vict. c. 35, s. 146, ninth rule.

² 16 & 17 Vict. c. 34, s. 51. The directors of a company who travel from their residences to the place of meeting of the company cannot, under this section, deduct their travelling expenses from the remuneration allowed them as such directors. *Revel v. Directors of Elworthy Brothers & Co., Limited* (not reported).

³ By sect. 45 of 5 & 6 Vict. c. 35, the profits of a married woman, living with her husband, are to be deemed the profits of the husband. See *post*, p. 180.

that his wife might be able to perform her ^{Chap. II.} duties as schoolmistress, which, in addition to the deduction of 120*l.* a year, the statutory abatement on all incomes less than 400*l.*, and 12*l.* allowed for annual life insurance premium, would have entitled him to total exemption, as reducing his income from all sources below 150*l.* a year. It was held that the deduction for expenses of keeping a servant could not be allowed. *Bowers v. Harding*, [1891] 1 Q. B. 560; 39 W. R. 558; 60 L. J., Q. B. 474; 64 L. T. 201.

4. A deduction on account of life insurance and purchase of deferred annuity, similar to ^{Fourth de-}^{duction:} ¹that ^{For life} allowed in case of profits, &c., chargeable under ^{insurance.} Schedule D.

Mr. Glasson was principal bursar of St. John ^{Case of} ^{Langston} Baptist College, Oxford, and in that capacity ^{v. Glasson.} received a stipend of 450*l.* a year. He was one of several officers who received such stipends as the president and fellows of the college at their general meeting considered to be proper. He was not one of the body who constituted the college. The following are instructions given by the Board of Inland Revenue to the officers of Inland Revenue. "The members of a capi-
tular or collegiate body are not liable to direct

¹ See *ante*, p. 128.

Chap. II.

assessment in respect of sums which they are, as members of the corporate body, legally entitled to receive out of the taxed income of the corporation. Salaries paid out of such income to persons who are not members are, however, chargeable by direct assessment, unless they are a charge by statute or otherwise on the revenue of the corporation." The question was, to which of the two categories the bursar belonged. If he was a member of the collegiate body, and was merely taking his share of the collegiate property, he would not be taxed, for then there would be no office, no salary, but he really would be receiving that which fell to his lot as one of that college body. But if he received a salary paid out of the college income, that salary was liable to be assessed and charged. It was held that the bursar fell under the latter of the two categories, and that he was chargeable with income tax in respect of his stipend. *Langston v. Glasson*, [1891] 1 Q. B. 567; 39 W. R. 476; 60 L. J., Q. B. 356; 65 L. T. 159.

*Exemption when Income is under 150*l.*; and Abatement when Income is under 400*l.**—¹A person whose income is less than 150*l.* a year is exempt from payment of income tax; and ¹a person whose income,

¹ 39 & 40 Vict. c. 16, s. 8.

though exceeding 150*l.*, is less than 400*l.* a year, is Chap. II.
entitled to an abatement in respect of 120*l.* of his
income. The mode in which the exemption and
abatement respectively are claimed and allowed will
be described ¹later on.

¹ *Post*, p. 309.

CHAPTER III.

ASSESSMENT AND COLLECTION.

WE have now to explain the modes in which the duties of income tax are assessed, and collected. The modes of assessment, and collection, differ according to the kind of property, or character of profits, to be charged. The simplest way to deal with the subject will be to take each schedule in turn, and describe with reference to the property, or profits, comprised in each the mode of assessment, and collection, prescribed.

SECTION I.—SCHEDULE A.

SUB-SECTION I.—ASSESSMENT.

Who are Commissioners for assessing Duty under Schedule A.—¹The General Commissioners act in all matters relating to the duties in Schedule A., except ²such allowances in respect thereof as are made by the Special Commissioners, and except ³assessments in respect of the annual value of, or profits or gains arising from, railways, ⁴which are made by the Special Commissioners.

¹ 5 & 6 Vict. c. 35, s. 22.

² 5 & 6 Vict. c. 35, s. 22. As to allowances made by the Special Commissioners, see *post*, Chap. IV.

³ 23 & 24 Vict. c. 14, s. 5.

⁴ See *post*, p. 212.

Place of Charge.—¹ All properties chargeable to the Chap. III. duties under Schedule A. are charged in the parish or place where the same are situate, except in the following cases:—

1. Canals, &c. The profits arising from canals, inland navigations, streams of water, drains or levels, railways, and roads or ways of a public nature, and belonging to, or vested in, any company of proprietors or trustees, corporate or not corporate, may be stated in one account, and charged in the city, town, or place at, or nearest to, the place at which the general accounts of such concern have been usually made up.

2. Manors and royalties. The profits arising from any manor or royalty which extends into different parishes may be assessed in one account in the parish where the Court for such manor or royalty has been usually held. And the profits arising from all fines received by the same person may be assessed in one account where the person to be charged resides.

3. Lands occupied by the same person. All lands occupied by the same person are to be brought into every account required to be delivered by such person, although situated in different parishes; but the duties to be charged thereon are charged in each parish, in proportion to the value of the property situate therein. But land situate in the same district of Commissioners, although in different parishes, may

¹ 5 & 6 Vict. c. 35, s. 60, No. 4, rr. 1, 2.

Chap. III. be charged in either parish at the discretion of the Commissioners, if they are satisfied that the proportion in each parish, either in respect of the quantity, rent, or value of the lands, cannot be ascertained. If the lands extend into different districts of Commissioners, they are to be assessed in the district in which the occupier resides.

Mode of proceeding to obtain Return.—¹The Assessor for each parish, being appointed as we have ²before explained, causes notices to be affixed on the door of the church, or chapel, of the parish, and in other specified situations, requiring ³all persons who are bound to make any list, declaration, or statement, to make out and deliver the same to the Assessor, or to the General Commissioners, or their Clerk, at a place to be specified in the notice, within a time which must not be more than twenty-one days. The notices must remain up for ten days before the day appointed for the delivery of the list, &c. ; and every person who defaces a notice renders himself liable to a penalty not exceeding 20*l.* Further, although the general notice we have mentioned is to be deemed sufficient notice to all persons resident within the place for which the Assessor acts, ⁴he must also give a similar

¹ 5 & 6 Vict. c. 35, s. 47.

² *Ante*, pp. 25 *et seq.*

³ As to the persons bound to make out lists, &c., see *post*, pp. 175—178.

⁴ 5 & 6 Vict. c. 35, s. 48.

notice to every person chargeable in respect of any ^{Chap. III.} property situate, or profits arising, within the limits of such place. This additional notice may be served by leaving it at the residence of the person to be charged, or on the premises upon which the assessment is made; or, if given by a Surveyor, as may be the case when Assessors are not appointed, or ¹ when the Assessor has neglected to give the notice to any person to whom it ought to be given, or when any person comes to reside in any parish, or place, after the expiration of the notices given by the Assessor, ² may be sent by registered post.

Persons required to make out Lists, &c.—The persons who are required to make out lists, declarations, and statements, and who are, therefore, affected by the above-mentioned notices, are the following:—

1. Persons chargeable. ³ Every person chargeable with duty must, when required to do so, prepare a statement in writing containing (a) the ⁴ annual value of all lands and tenements in his occupation, and (b) the amount of the profits or gains made by him, and chargeable, from whatever source they arise.

2. Persons acting for others. ⁵ Every person who receives money, or value, or profits, or gains, belong-

1. Persons
charge-
able with
duty must
make out
statement.

¹ 5 & 6 Vict. c. 35, s. 57.

² 43 & 44 Vict. c. 19, s. 16.

³ 5 & 6 Vict. c. 35, s. 52.

⁴ As to the meaning of "annual value" under Schedule A., see *ante*, pp. 48 *et seq.*

⁵ 5 & 6 Vict. c. 35, s. 51.

2. Persons
acting for
others

Chap. III. ing to any other person, for which such other person must make is chargeable, or would be chargeable if resident in out state-ments; Great Britain, must prepare a statement in writing of such money, value, profits, or gains, and of the name and place of abode of every person to whom the same belongs, and whether such person is of full age, or a married woman living with her husband, or a married woman for whose payment of the duty the husband is not accountable, or resident in Great Britain, or an infant, idiot, lunatic, or insane person. If any other person is joined with the person delivering this statement in receiving such money, value, profits, or gains, his name and address must also be stated. ¹If the person to whom the money, &c., belongs is an idiot or lunatic, or resident out of Great Britain, and so cannot be personally charged, the person making the statement must add a declaration that the amount of the profits, &c., has been estimated on all the sources mentioned in the schedules describing the same, as if he himself were to be charged in respect of property of his own.

and if the owner of the pro-
perty is an idiot,
or lunatic,
or resi-
dent out
of Great
Britain,
must add
a declara-
tion.

**3. Officers of com-
panies**
must make
out state-
ments.

3. Officers of companies. ²The Chamberlain, or other officer acting as treasurer, auditor, or receiver, for the time being, of any corporation, fraternity, fellowship, company, or society, must prepare a statement in writing of the profits and gains of such corporation, &c.; and ³must also do all such acts as

¹ 5 & 6 Vict. c. 35, s. 53.

² 5 & 6 Vict. c. 35, s. 54.

³ 42 & 43 Vict. c. 21, s. 18.

are required to be done for assessing the officers and Chap. III. persons in the employment of the corporation, &c. The estimate of profits, &c., must be made on the amount of the annual profits and gains before any dividend is paid; but salaries, wages, or profits of any officer of such corporation, &c., otherwise chargeable, are not to be included in the statement.

4. Persons having lodgers, employés, &c. ¹ Every person, on being required to do so, must prepare a list in writing of the names of lodgers or inmates resident in his dwelling-house, and of other persons chiefly employed in his service, whether resident in his dwelling-house or not, and of any lodger or inmate who has any ordinary place of residence elsewhere at which he is entitled, and desires, to be assessed.

² The lists, &c., must be made out in the prescribed form, and signed by the person making them, and delivered to the Assessor of the parish, or place, in which such person resides. In the case of statements made by trustees, or agents, of persons incapacitated, or abroad, the statements may be signed by all the trustees, or agents, if more than one, or by one on behalf of himself and his colleagues; and when the statement is made by the person chargeable, or, as before mentioned, by the agent of a person incapacitated, or resident out of Great Britain, or by the

4. Persons having lodgers, employés, &c. must make out lists of names.

¹ 5 & 6 Vict. c. 35, s. 50.

² 5 & 6 Vict. c. 35, ss. 50, 51, 52, 53, 54, 190, Sched. G.



Chap. III. officer of a corporation, &c., it must contain a declaration that the amount of profits which it shows has been estimated on all the sources contained in the schedules describing the same. ¹ The penalty for neglecting to deliver lists, &c. is, if proceeded for by information before the Commissioners, a sum not exceeding 20*l.* and treble duty, the increased duty to be added to the assessment; if proceeded for in a court of law, 50*l.* But if any person who is required to deliver a list, &c., on behalf of another, delivers an imperfect list, &c., and declares that he is at the time unable to deliver a more perfect list, &c., giving reasons for such inability, and the Commissioners are satisfied with the reason given, further time may be granted for the delivery of a list, &c., as perfect as the nature of the case admits of. ² And no person required to deliver a list of persons in his service or employ is liable to a penalty for omitting the name, or residence, of any such person not resident in his dwelling-house, if it appears that such person is exempt from payment of duty. ³ And a person who has not received a particular notice from the Assessor, ⁴ as before mentioned, is not liable to any penalty for having neglected to make a statement of income, if it appears to the Commissioners on inquiry that he is entitled to be exempt from payment of all duty.

¹ 5 & 6 Vict. c. 35, s. 55.

² 5 & 6 Vict. c. 35, s. 50.

³ 5 & 6 Vict. c. 35, s. 56.

⁴ *Ante*, pp. 174, 175.

Persons chargeable.—All persons who are in pos- Chap. III.
session for their own benefit of profits arising from
property, professions, trades, and offices, are “persons
chargeable” with duty in respect thereof.

Persons chargeable in respect of Profits not their own. Persons
charge-
able in
respect of
profits not
their own;
—Besides those who are in receipt for their own benefit of profits arising from property, professions, trades, and offices, and who are chargeable with duty in respect thereof, certain other persons are chargeable in respect of profits not their own, but which they receive for others. Thus ¹the parent, guardian, parents,
trustees,
or tutor of any infant or person under twenty-one guardians,
years of age, and the trustee, guardian, tutor, cura- curators,
tor, or committee of any infant, married woman, com- mittees;
lunatic, idiot, or insane person, having the manage-
ment of the property of such infant, &c., whether such infant, &c., is resident in Great Britain or not; and ²the executors or administrators of any person dying; executors
and admi-
and ³the factor, agent, or receiver, having receipt of nistrators;
mittees;

¹ 5 & 6 Vict. c. 35, ss. 41, 108, 173; 43 & 44 Vict. c. 19, s. 92.

² 5 & 6 Vict. c. 35, s. 173; 43 & 44 Vict. c. 19, s. 92.

³ The person not resident in Great Britain is, strictly speaking, to be charged, but *in the name of* his trustee, guardian, tutor, curator, committee, factor, agent, or receiver. (Sect. 41.) This, however, practically amounts to the trustee, &c. being chargeable, and he is responsible for doing all acts requisite for assessment. But see sect. 108. In *Tischler v. Apthorpe* (33 W. R. 548; 52 L. T. 814, *ante*, p. 106), Mathew, J., referring to sect. 41 of 5 & 6 Vict. c. 35, said, “When one looks at the section, and then at sect. 44” (see below), “it is clear that sect. 41 is intended to aid the Commissioners in

Chap. III. any profits belonging to any person resident out of Great Britain; ¹the receiver appointed by the Chancery Division of the High Court of Justice, or any other Court in Great Britain having the direction and control of any property chargeable; ²the husband of any married woman living with her husband (in respect of profits of the wife); ³the wife of any man, living separate from her husband, whether he shall be only temporarily absent or otherwise (in respect of any allowance or remittance received from her husband, or from property of his out of Great Britain); are all chargeable in respect of the profits received by them in the characters aforesaid. So ⁴all bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies of persons, corporate or not corporate, are chargeable, and the

recovering the tax, and not to alter the incidence of taxation in any way, for, under sect. 44, the agent who was charged under sect. 41 is entitled to recover from his principal, who is the person really liable, any payment he may have made. If the principal can be got at, there is no need to have recourse to sect. 41. But where the case contemplated by sect. 41 arises, of one resident abroad who cannot be reached by the Commissioners, then the Commissioners can come down upon the agent." This was adopted by Lord Esher, M. R., in *Werle & Co. v. Colquhoun*, 20 Q. B. D. 753; 36 W. R. 613; 57 L. J., Q. B. 323; 58 L. T. 756 (*ante*, p. 109).

¹ 5 & 6 Vict. c. 35, s. 43.

² 5 & 6 Vict. c. 35, s. 45.

³ 5 & 6 Vict. c. 35, s. 45. Married women acting as sole traders, or having separate property, are chargeable as if unmarried.

⁴ 5 & 6 Vict. c. 35, s. 40.

officer acting as treasurer, auditor, or receiver, for *Chap. III.* the time being, is to do all acts requisite for assessment. ¹ But parents, trustees, agents, factors, receivers, guardians, tutors, curators, or committees, executors, or administrators, so charged may retain from moneys coming to their hands when acting in such capacities enough to pay the duties charged, and every such officer of a company, &c. is indemnified against the company, &c. for all payments made by him in discharge of such chargeableness as aforesaid. ² A trustee who has authorized the receipt of the profits arising from the trust property by the person entitled thereto, or his agent (provided they have been actually so received), need, however, do no more than return a statement of the name and residence of such person, and the case is the same with any agent, or receiver, of any person of full age resident in Great Britain, not being a married woman, lunatic, idiot, or insane person, unless indeed the testimony of the trustee, agent, or receiver, is required by the Commissioners, ³ for then such testimony must be given.

Occupiers chargeable for Owners of Land.—⁴ The occupier, that is, the person having the use, of any

¹ 5 & 6 Vict. c. 35, ss. 44, 73; 43 & 44 Vict. c. 19, s. 92.

² 5 & 6 Vict. c. 35, s. 42.

³ 5 & 6 Vict. c. 35, s. 125.

⁴ 5 & 6 Vict. c. 35, s. 63, No. 9, rr. 1, 2, 3. The occupier may deduct the duties paid by him from his rent. See *post*, pp. 197, 198.

Chap. III. lands or tenements for the time being, is chargeable with the duties under Schedule A., although he is not the owner of the lands and tenements, and although ¹he has not occupied them for the whole period for which the duty is levied. There are, however, the following exceptions to this rule, the reasons for which will be easily understood :—

First exception :
Dwelling-house
under the
value of
10*l.* a
year, and

land or
tenement
let for a

1. Dwelling-house under the value of 10*l.* a year, or let for a period less than one year. ²The owner, and not the occupier, is chargeable in the case of any dwelling-house in the occupation of a tenant, which, with the buildings or offices belonging thereto and the land occupied therewith, is under the value of 10*l.* a year, and also in the case of any land or tenement let to any tenant for a less period than

¹ Every tenant on quitting the occupation is liable for any arrears at the time of so quitting, and for a proportionate part of the accruing duty up to the time of quitting. The amount for which the tenant quitting is so liable must be settled and levied by the Commissioners, and repaid to the occupier by whom the same has been paid. The executors, or administrators, of any tenant who dies before payment of any such assessment, is liable in like manner as the testator or intestate would have been if living. Every tenant quitting before the time of making the assessment, is liable for such portion of the year as has elapsed at the time of his so quitting, and the amount for which he is so liable must be adjusted, and settled, by the Commissioners; 5 & 6 Vict. c. 35, s. 63, No. 9, r. 3. These provisions can only have effect where the occupier cannot deduct the duty he has paid from the rent. See the last note.

² 5 & 6 Vict. c. 35, s. 60, No. 4, r. 3.

one year. But in default of payment by the owner ^{Chap. III.}
the duty may be recovered from the occupier.

2. House occupied by foreign minister. ^{less period than one year.} ^{Second exception : House occupied by foreign minister.} The owner, or person immediately entitled to the rent, and not the occupier, is chargeable in the case of any house or tenement occupied by any accredited minister from any foreign prince or state.

3. House let in apartments. ^{Third exception : House let in apartments.} The landlord of any house or building let in different apartments or tenements, and occupied by two or more persons severally, is chargeable in respect of such house, &c. But in default of payment by him, the duty may be levied on the occupier or occupiers respectively. And ³where any house is divided into distinct properties, and occupied by distinct owners, or their respective tenants, the duties are charged upon the respective occupiers.

Landowner chargeable for Owner of Rent-charge in lieu of Tithe.—⁴By an exception introduced in the case of the owner of a rent-charge confirmed under the ⁵Act passed for the commutation of tithes, the owner of the land out of which the rent-charge issues pays the duty in respect of the land without any deduction on account of such rent-charge, though ⁶on paying the rent-charge he will, of course, deduct the duty thereon.

¹ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 7.

² 16 & 17 Vict. c. 34, s. 36.

³ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 13.

⁴ 5 & 6 Vict. c. 35, s. 60, No. 2, r. 3.

⁵ 6 & 7 Will. 4, c. 71.

⁶ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 10. See *post*, p. 200.

Chap. III. ¹But (²except in the Metropolis), on a due return of any such rent-charge being made by the owner thereof in order to an assessment upon him, the Commissioners acting in the matter may, if they think fit, charge and assess the owner of the rent-charge in respect thereof, allowing a deduction for the amount of the parochial rates charged upon, or in respect of, such rent-charge during the preceding year, and, in case the assessment is made upon the owner of the rent-charge, the amount of the rent-charge is allowed as a deduction in the assessment of the land upon which the same is charged.

Case of
*Stevens v.
Bishop.*

The owner of a tithe commutation rent-charge assessed under section 32 of the Act of 1853, may deduct the expenses of collection, where the amount could not be realised without such expenditure in collection. Sect. 5 of the Act of 1853 makes the earlier statute of 1842 applicable to the income tax under the later Act. The method of assessment under that Act is contained in Schedule A. Rule 1 of that Schedule is the rule applicable. Matters incapable of actual occupation may very well be within that rule, but at any rate the words used in that rule must be made to apply, inasmuch as sect. 5 of the Act of 1853 makes them applicable, for the case cannot be brought under rule 2. The

¹ 16 & 17 Vict. c. 34, s. 32.

² 32 & 33 Vict. c. 67, s. 77. As to the meaning of "Metropolis," see *ante*, p. 29, note ³.

value of the tithe rent-charge is, therefore, the Chap. III. amount at which it would let at a rack rent. This clearly could not exceed the gross amount of the tithe rent-charge less the reasonable remuneration for its collection, not the cost of a merely optional collection, but the expenditure without which the amount could not be realised. *Stevens v. Bishop*, 20 Q. B. D. 442; 36 W. R. 421; 57 L. J., Q. B. 283; 58 L. T. 669.

Other Persons chargeable.—¹ Subjects of the Queen whose ordinary residences are in Great Britain, but who have gone abroad for the purpose only of occasional residence, remain chargeable as if they had continued to reside in Great Britain. Persons temporarily in Great Britain become chargeable after residence, at one time, or at several times, for a period amounting to six months in any one year.

Proceedings after Notices given.—The notices having been given,² the Assessor appears before the Commissioners at the time appointed, and verifies upon oath the fixing of the general notices, and the delivery of the particular notices; and, if it appears that notices have not been served upon any persons, the Surveyor may cause notices to be served on them, as he may also cause notices to be served upon persons coming to reside in the parish after the Assessor's report.

¹ 5 & 6 Vict. c. 35, s. 39.

² 5 & 6 Vict. c. 35, ss. 57, 58.

Chap. III. *Assessment—Period for which made.*—¹ Every assessment is made for the year commencing on the 6th day of April in any year, and ending on the 5th day of April following; each of such days being reckoned inclusively.

Assessment in Case of Return made by Party chargeable.—² In the meantime, however, the Assessor proceeds to make his assessment, observing therein, in the case of each kind of property, the rules applicable thereto, which we have before explained; and using the returns made by the party chargeable. If he finds a difficulty in so doing, he applies for instruction, and assistance, to the Commissioners, or to the Surveyor. If he is not satisfied with the return made by the person to be charged, or if no return has been made, and if the annual value cannot otherwise be ascertained, he proceeds to estimate to the best of his judgment the annual value of the property of which no account, or no sufficient account, has been delivered, and to assess the same ³ except in the Metropolis; ⁴ taking as his guide the last assessment of the property for the purpose of the poor-rate in all cases in which the poor-rate has been made throughout by a pound-rate on the annual value as it would be estimated accord-

¹ 43 & 44 Vict. c. 19, s. 48.

² 5 & 6 Vict. c. 35, ss. 64, 74.

³ See below.

⁴ 5 & 6 Vict. c. 35, s. 64, No. 11, r. 1.

ing to Schedule A.; and in other cases, whenever Chap. III. possible, taking the assessment for the purpose of the poor-rate as his guide according to certain prescribed rules. In the Metropolis, as that word is defined by the ¹ Valuation (Metropolis) Act, 1869—that is, the unions, and parishes not in union, which were either wholly or for the greater part in value, situate within the jurisdiction of the Metropolitan Board of Works appointed under the ² Metropolis Management Act, 1855—³ the valuation list made in pursuance of the ⁴ Valuation (Metropolis) Act, 1869, and for the time being in force, is conclusive evidence of the gross value, and rateable value, of the several hereditaments included therein, and of the fact that all hereditaments required to be inserted therein have been inserted therein, for the purpose of the ⁵ Income Tax Acts, in all cases where the tax is charged upon the gross value and not on profits. ⁶“Gross value,” as used in the Act we have just been quoting, is defined to mean “the annual rent which a tenant might reasonably be

¹ 32 & 33 Vict. c. 67. See *ante*, p. 29, note ³.

² 18 & 19 Vict. c. 120. The Metropolitan Board of Works no longer exists, having been abolished by the “Local Government Act, 1888” (51 & 52 Vict. c. 44).

³ 32 & 33 Vict. c. 67, s. 45.

⁴ 32 & 33 Vict. c. 67. The provisions of this Act relating to the making of valuation lists, and to appeals, contained in sects. 6—42, should be referred to.

⁵ 5 & 6 Vict. c. 35, and any Acts continuing or amending the same. See 32 & 33 Vict. c. 67, s. 45 (2) (b).

⁶ 32 & 33 Vict. c. 67, s. 4.

In the Metropolis the valuation list is conclusive evidence of “gross” and “rateable” value.

Chap. III. expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and if the landlord undertook to bear the cost of the repairs, and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent;" while the term "rateable value," as used in the same Act, is defined to mean ¹"the gross value after deducting therefrom the probable annual cost of the repairs, insurance, and other expenses as aforesaid." The Assessor ²may, however, estimate the value of any dwelling-house which, with any ground occupied therewith, is of less annual value than 10*l.*, and the value of which he is able to estimate, either according to the prescribed rules, or of his own knowledge, without requiring a return of the annual value, unless the Surveyor objects to his so doing; and this extends to land separately occupied. ³He is authorized to require any tenant to produce to him the lease, or agreement, under which the tenant holds; and, if the lease, or agreement, was made within the period of seven years, and the rent reserved expresses the full consideration, either in money or in value, for the lease, the Assessor may take such rent as the annual value of the property; but always having regard to any increase of the

¹ 32 & 33 Vict. c. 67, s. 4.

² 5 & 6 Vict. c. 35, s. 65.

³ 5 & 6 Vict. c. 35, s. 66.

amount of the reserved rent, by reason of any agreement by the landlord to pay tenant's rates and taxes, or to any decrease of the amount of the same rent, by reason of any agreement by the tenant to pay landlord's rates and taxes.¹ Express provision is made for cases in which the tenant has undertaken to make certain improvements in the property let, and the rent has been fixed with reference to the estimated result of such improvements, but at a sum higher than the present annual value of the property.² If the tenant holds under a parol agreement made within the same period of seven years, or for any reason has not the custody of the lease under which he holds, it will be enough if, instead of producing a lease or agreement, he gives to the Assessor an account in writing, signed by himself, of the actual amount of the annual rent reserved; and the Assessor may make the assessment according to such rent.³ The penalty for delivering a false account, or omitting to produce any lease or agreement, with intent to conceal the annual value of the property comprised therein, is 20*l.* and treble duty.

Where there is an existing lease, made within the last seven years, by which the property which is the subject of the assessment is let at rack-rent, the rent named is to be taken as the annual

*Case of
Campbell
v. Inland
Revenue.*

¹ 5 & 6 Vict. c. 35, s. 66.

² 5 & 6 Vict. c. 35, s. 67.

³ 5 & 6 Vict. c. 35, s. 68.

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value. But if upon the face of the lease it clearly appears that what is called rent is payable, in part at least, for something which is not the subject of assessment, the clause does not apply. *Campbell v. Inland Revenue*, 17 Sco. L. R. 23. In this case a part of what appeared to be rent was in fact an annual instalment of a sum agreed to be paid for purchase of the goodwill of a business, and for stock in trade, the remainder only being rent properly so called.

Delivery of Certificates of Assessment.—The Assessor, having made his assessments, introduces the same into a certificate, the form of which is prescribed by the ¹Taxes Management Act, 1880, and delivers the certificate to the General Commissioners, with all returns made to him; and ²the General Commissioners forthwith deliver the certificate to the Surveyor for examination. ³The Surveyor has a right to examine every return, and every first assessment of the duties made for any parish, for any year; and every person who has any such return in his custody must deliver the same to the Surveyor, if he requests him to do so, taking the Surveyor's receipt for the same; and the Surveyor may take charge of any assessment so delivered to him, until he has taken such copies of, or extracts from, the same as may be necessary for his

¹ 43 & 44 Vict. c. 19.

² 43 & 44 Vict. c. 19, s. 50,

³ 43 & 44 Vict. c. 19, s. 51; 5 & 6 Vict. c. 35, s. 161.

better information. ¹ Any person who wilfully obstructs the Surveyor in the performance of his duty in this respect is liable to a penalty of 50*l.* ² The Surveyor may also require the Assessor to give notice to the overseers of the parish to deliver the rate books of the parish, and a true copy of the last rate made, to the Surveyor for his use, or to produce them to the General Commissioners; and ³ he may at all times inspect, and take copies of, or extracts from, any book kept by any parish officer, or other person, concerning the poor-rates, or any other public taxes or rates; and ⁴ if the occupier, or other person chargeable, has, after due notice given, omitted to make the required return, or has made a return with which the General Commissioners are dissatisfied, the Surveyor may, after having first obtained an order from the General Commissioners, and after two days' notice to the occupier, accompanied by such skilled persons as are named in the order, view and examine any property chargeable, in order to ascertain its annual value. A similar power is given to Assessors.

Amendment of Assessment.—⁵ If the Surveyor, upon examination, discovers that any properties, or profits, chargeable to the duties have been omitted, or that any person chargeable has not made a full and proper

¹ 5 & 6 Vict. c. 35, s. 161.

² 5 & 6 Vict. c. 35, s. 75.

³ 5 & 6 Vict. c. 35, s. 76.

⁴ 5 & 6 Vict. c. 35, s. 78.

⁵ 43 & 44 Vict. c. 19, s. 52.

Chap. III. return, or has made no return at all, or has not been charged, or has been undercharged, or has obtained any allowance, deduction, abatement, or exemption, not authorized, he corrects and amends the assessment. If the discovery should be made after the assessment has been signed and allowed in the manner ¹presently described, but within four months of the expiration of the year to which the assessment Surveyor's relates, the Surveyor certifies this error to the General certificate. Commissioners, who then sign and allow an additional first assessment, made in accordance with the first assessment. particulars certified by the Surveyor.

Rectifica-
tion of as-
sessments.

Allowance of Assessments.—² After the Surveyor has examined the assessments made, the General Commissioners take them into consideration; and, if the Surveyor has made no objections, and they are satisfied, they sign and allow the assessments. If the Surveyor makes an objection to any assessment, the Commissioners ³rectify the same according to the best of their judgment. The General Commissioners ⁴have the same right as the Surveyor to require the overseers of any parish to produce the rate books,

¹ See below.

² 43 & 44 Vict. c. 19, s. 56.

³ Except where they are specially authorized to do so, no assessment delivered to the General Commissioners is to be altered by them, except in case of, and upon, appeal. 43 & 44 Vict. c. 19, s. 57. See *post*, pp. 274—277.

⁴ 5 & 6 Vict. c. 35, s. 75.

and ¹to inspect the rate books, and take copies of, or ^{Chap. III.} extracts from, them ; and, if the Surveyor alleges that the assessments have not been properly made, ²they may summon Assessors and overseers before them, and examine them on their oaths.

Omissions from First, or Additional First, Assessments, how dealt with.—³ An omission discovered by the Surveyor within the year following the year for which the person liable ought to have been charged, may be rectified by the Surveyor charging such person, ^{Surcharge by Sur-} and giving notice to him of the charge and the par- ^{veyor.} ticulars thereof, and certifying to the General Commissioners the particulars of the omission and charge. The Commissioners, upon oath being made by the Surveyor, or other credible witness, of the service of the notice, sign and allow the certificate. The certificate must, however, be delivered to the General Commissioners, or to their Clerk, within the year following the year of assessment. ⁴The person charged may, however, within ten days after receiving the notice, make an amended return, or give notice in writing to the Surveyor that he abides by the former return (if any) made by him, accompanying the same with a declaration, signed and attested, containing

¹ 5 & 6 Vict. c. 35, s. 76.

² 5 & 6 Vict. c. 35, s. 75.

³ 43 & 44 Vict. c. 19, s. 63.

⁴ 43 & 44 Vict. c. 19, s. 64.

Chap. III. the particulars prescribed by the ¹ Taxes Management Act, 1880. The Surveyor may object to the return, or amended return; or may certify his satisfaction to the General Commissioners. In the former case the Surveyor must give notice of his objection to the person charged, and certify the return, or the amended return, and the cause of his objection, to the General Commissioners, who must thereupon cause the assessment to be made upon the Surveyor's certificate of objection, and allow no abatement, except on the ² appeal of the person charged. ³ To make a false declaration in this respect is a misdemeanour, and the penalty imprisonment for a period not exceeding six months, and a fine not exceeding treble the amount of duty charged.

Apportionment of Assessment by General Commissioners in Case of Divided Occupation.—⁴ If after the assessment the land, &c., which is the subject of it comes to be divided into two or more distinct occupations, the General Commissioners have power to apportion the duty among the occupiers upon the appeal of the parties interested.

Assessment of Railways by the Special Commissioner.—⁵ The annual value of, or profits or gains arising

¹ 43 & 44 Vict. c. 19.

² As to the mode of appealing, see *post*, pp. 274—278.

³ 43 & 44 Vict. c. 19, s. 66.

⁴ 23 & 24 Vict. c. 14, s. 4.

⁵ 23 & 24 Vict. c. 14, s. 5.

from, any railway are,¹ as we have said, assessed by *Chap. III.* the Special Commissioners. The mode of assessment by the Special Commissioners² will be described when we treat of duties payable under Schedule D. The Special Commissioners, upon making an assessment upon any railway company, notify the amount of the assessment to the secretary or other officer of the company upon whom the assessment is made.

Time when Duties become payable.—Duties of income tax, except such as are payable by way of deduction, or are assessable in respect of³ railways,⁴ generally become payable on the 1st of January in the year for which the duties are charged; but duties of income tax included in any assessment signed and allowed on or after any such 1st of January become payable on the day after that on which the assessment is signed and allowed. Duties payable by way of deduction⁵ must be deducted out of the sums in respect of which they are charged at the times when such sums become payable.

¹ See *ante*, p. 172.

² See *post*, pp. 245, 246.

³ As to when duties assessed on railways become payable, see *post*, pp. 212, 213.

⁴ 43 & 44 Vict. c. 19, s. 82.

⁵ 5 & 6 Vict. c. 35, s. 158.

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SUB-SECTION II.—COLLECTION.¹

Duplicates
of assess-
ment.

Proceedings after Assessment in order to the Collection of the Duties.—As soon as any assessments of income tax are signed and allowed by the General Commissioners, and ²the time for hearing appeals has expired, the Clerk to the General Commissioners prepares ³two duplicates of every assessment, in the prescribed form, which are then signed and sealed by the General Commissioners. One of the duplicates is handed by the Commissioners to the Collector of the parish for which the assessment is made, with a warrant for collecting the duty. The other duplicate is delivered to the Surveyor of the district. ⁴Assessments not made, or against which any appeal is depending, when the first assessments are signed and allowed, when made, or determined, are included in a separate form of assessment and duplicate, and then collected in the same manner as the duties charged by the first assessments. When the duties become payable, ⁵the Collector demands the sums

¹ Sect. 9 of the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), contains a general saving of all powers for recovery of income tax contained in the Acts relating to income tax then in force, in cases not provided for by that Act, and so far as the same are not inconsistent with the express provisions of that Act.

² As to the time for hearing appeals, see *post*, p. 275.

³ 43 & 44 Vict. c. 19, s. 83.

⁴ 43 & 44 Vict. c. 19, s. 84.

⁵ 43 & 44 Vict. c. 19, s. 85.

from the persons charged with the same, and upon Chap. III. payment he gives a receipt in ^{the} [—] prescribed form.

Cases in which Persons chargeable may deduct Sums paid by them for Duty from Payments made by them.— It will be convenient to mention here the cases in which persons charged with duty under Schedule A. are authorized to deduct the whole, or part, of what is paid by them for duty from payments which they make to others, and so become in some sense collectors of the duty from the persons ultimately liable thereto. The cases referred to are the following :—

1. ² Where the occupier, not being the owner, of any lands, tenements, or hereditaments, pays the duties assessed upon such lands, &c., he may deduct out of the next rent payable to the landlord so much of what he has paid for duty as a rate upon the rent payable equivalent to the rate of duty charged would amount to. But the whole sum to be deducted from the rent must not exceed the sum actually paid for duty by the occupier. ³ If the rate of income tax has varied during the period for which the rent is paid, so that the amount to be deducted cannot be calculated, except by taking a proportionate amount

¹ That is, the form prescribed by the Board. 43 & 44 Vict. c. 19, ss. 5, 15 (3). The receipt is not liable to stamp duty, *ante*, pp. 41, 42.

² 5 & 6 Vict. c. 35, s. 60, No. 4, r. 9; 16 & 17 Vict. c. 34, s. 40. As to the cases in which occupiers are chargeable for owners, see *ante*, pp. 181—183.

³ 27 & 28 Vict. c. 18, s. 15.

Chap. III. of several rates of income tax, such proportionate amount may be deducted from the rent by the occupier. ¹A mortgagee in possession, not in actual occupation of the land, &c. mortgaged, is liable to the same deduction as any other landlord would be.

Second case:
Mortgagor in possession and in actual occupation of lands, &c. mortgaged must allow duty on interest in accounts between himself and mortgagor.

2. ²A mortgagee in possession, and in actual occupation of the lands, &c. mortgaged, in the settlement of accounts between himself and the mortgagor, must allow the duty payable in respect of the amount of interest due upon such mortgage, as so much interest received by him on account of such interest. ³The provision we have just quoted for the case of a variation in the rate of income tax applies here, so that if the income tax has varied during the period through which the interest has accrued a proportionate amount of the several rates of income tax chargeable must be allowed.

Third case:
Persons

3. ⁴Every person liable to the payment of any rent, or any ⁵yearly interest of money, or any an-

¹ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 11.

² 5 & 6 Vict. c. 36, s. 60, No. 4, r. 11.

³ 27 & 28 Vict. c. 18, s. 15.

⁴ 16 & 17 Vict. c. 34, s. 40.

⁵ The words "or other annual payment" shows that the payments before referred to are annual payments. Rent means annual rent, and yearly interest cannot mean interest for less than a year. The interest upon short loans, not intended to be continued, and not continued, beyond a year, is not "yearly interest" within the meaning of the section. But a common mortgage, although expressed to be for six

nuity or other annual payment, as a charge on any Chap. III.
 property, whether the same is payable half-yearly, or liable to
 at any shorter or more distant periods, is authorized, pay rent,
 on making such payment, to deduct thereout the yearly
 amount of the rate of duty payable at the time when
 such payment becomes due; and the person to whom
 such payment is to be made must allow such deduction
 upon penalty of a forfeiture of 50% for refusing
 to do so. But the sum deducted must not be
 greater than the amount of the duty actually paid.
<sup>interest,
&c. may
deduct
duty
thereon.</sup>
¹The provision above mentioned for the case of a
 variation in the rate of income tax applies to the
 cases we are now considering.

4. ²Any person paying any rent-charge under the Fourth
^{case :}
³“Drainage Advances Acts” may from time to time Persons
 deduct thereout, in respect of the duty chargeable, paying
 one-third part of the sum which the rate of such rent-
 duty, computed on such rent-charge, amounts to;
^{“Drainage}
^{Acts”}
 and the deduction must be allowed by the receiver ^{may de-}
^{duct one-}
^{third of}
^{the duty}
 months, is not, as a matter of business or in fact, a short thereon.
 loan. *Goslings and Sharpe v. Blake*, 23 Q. B. D. 324; 37
 W. R. 774.

¹ 27 & 28 Vict. c. 18, s. 15.

² 16 & 17 Vict. c. 34, s. 42. Although sect. 15 of 27 & 28 Vict. c. 18, in terms applies only to cases within the 40th section of 16 & 17 Vict. c. 34, reason would seem to prescribe the application of the provision made by the first-named section to this case of a rent-charge under the Drainage Advances Acts.

³ 9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9.

Chap. III. and collector of the rent-charge upon receipt of the residue of the rent-charge then due.

Fifth case:
Owner of
lands
subject
to rent-
charge in
lieu of
tithes, &c.
may de-
duct duty
thereon.

5. ¹ When any lands, &c. are subject to the payment of any rent-charge under the ²Act passed for the Commutation of Tithes, or otherwise, or any annuity, fee farm rent, rent service, quit rent, stipend to any licensed curate, or other rent or annual payment charged thereon, the owner, not being the occupier, if he has allowed to the occupier any deduction from his rent in respect of duty paid by him under Schedule A., and the owner being also the occupier, may deduct out of every such rent-charge, &c., a proportionate part of the duty; and such deduction must be allowed by the person receiving, or entitled to, the rent-charge, &c.

Penalties
for re-
fusing to
allow de-
duction.

³ If any person refuses to allow any deduction authorized to be made out of any payment of annual interest of money lent, or other debt bearing annual interest, secured by mortgage or otherwise, he forfeits for every such offence treble the value of the

¹ 5 & 6 Vict. c. 35, s. 60, No. 4, r. 10. We may repeat here, *mutatis mutandis*, the observation made on the preceding page, note ².

² 6 & 7 Will. IV. c. 71.

³ 5 & 6 Vict. c. 35, s. 103. If a tenant does not deduct the property tax paid by him from the next rent, he cannot afterwards recover it as money paid; but if the tenant abstains from deducting the tax upon the promise of the landlord to repay the amount of the tax, there is a good consideration for the promise, and the tenant may sue upon it. *Lamb v. Brewster*, L. R. 4 Q. B. D. 220; 48 L. J., Q. B. 421; 40 L. T. 537; 27 W. R. 478.

principal money or debt; and if any person refuses Chap. III.
to allow any deduction authorized to be made out of
any rent or other annual payment before mentioned,
he forfeits the sum of 50*l.* All contracts, covenants,
and agreements made for payment of any interest,
rent, or other annual payment aforesaid, without
allowing such deduction, are void.

A tenant who had been assessed, and had ^{Case of} *Swatman v. Ambler.*
paid income tax under Schedule A. in respect
of land occupied by him, claimed to make the
deduction from his next payment of rent. The
landlord was not in fact liable to be assessed.
He had, before the payment of the tax by the
tenant, claimed exemption, and the exemption
was, but subsequently to the payment, allowed.
It was held that the tenant had nevertheless
a right to make the deduction from his rent.
Swatman v. Ambler, 24 L. J., Ex. 185.

A lessee of land for a term of years had ^{Case of} *Edmonds v. Eastwood.*
power to dig brick earth and make and sell
bricks. He paid (1) for surface rent 17*l.* 10*s.*
a year; (2) for royalty, or brick rent, 100*l.* a
year; (3) for every 1,000 bricks above the first
million made in any year 2*s.* It was held that
the lessee was assessable under Schedule A. in
respect of all three kinds of rent, and might
make the deduction from his rent. *Edmonds v. Eastwood*, 27 L. J., Ex. 209.

A coal-mine was sold upon terms that the ^{Cases of} *Taylor v. Evans*, and
purchaser should pay the purchase-money by *Evans*, and

Chap. III.*Foley v.
Fletcher.*

half-yearly instalments, which varied according to the amount of coal gotten, the minimum instalment being 150*l.* a year. It was held that the purchaser was not entitled to make the deduction from the instalments payable by him. *Taylor v. Evans*, 25 L. J., Ex. 269. A somewhat similar case was *Foley v. Fletcher*, 28 L. J., Ex. 100.

*Case of
A.-G. v.
Shield.*

S. enjoyed an annuity charged upon real property, which was to be paid "free and clear of all taxes and assessments." He refused to allow the owner of the property to make any deduction from the annuity. S. was held liable to the penalty imposed by the Income Tax Acts for refusing to allow the deduction of income tax authorized by those Acts from "rents or annual payments." *Attorney-General v. Shield*, 28 L. J., Ex. 49.

*Case of
Festing v.
Taylor.*

Section 103 of 5 & 6 Vict. c. 35 does not apply to rent-charges granted by will; so that, if a testator by his will grants a rent-charge to be paid free of income tax, the annuitant is entitled to have the full amount paid to him, without the tax being deducted. *Festing v. Taylor*, 32 L. J., Q. B. 41.

If Payment of Duty is refused—Remedy by Distress.—If any person charged refuses to pay the duty on demand made, the Collector ¹must distrain

¹ 43 & 44 Vict. c. 19, s. 86. The Crown's right of distress is universal (per James, L. J., *In re W. J. Henley & Co.*, 26

upon the premises charged with the duty, or must Chap. III. distrain the person charged by his goods and chattels; for which he requires no other authority than ¹the warrant delivered to him upon his appointment. ²For the purpose of levying a distress in such a case, the Collector may, if necessary, obtain a warrant from the General Commissioners, authorizing him to break open, in the daytime, any house or premises, calling to his assistance any constable, or other peace officer, for the parish; but such last-mentioned warrant must be executed by, and in the presence of, the Collector. ²Every distress levied by a Collector must be kept by him for five days, at the cost of the person refusing to pay; and, if the duty is not paid within the five days, the distress must be appraised, that is, a value must be set upon it, by two inhabitants of the parish, or other sufficient persons, and then sold by public auction by the Collector or his deputy. If anything remains of the proceeds of sale, after deducting the duty, and the cost of taking, keeping, and selling the distress, it

W. R. 885), and therefore the statute provides that the distress may be either upon the premises charged, *or* upon the goods and chattels of the person charged, which may be elsewhere than upon the premises. The section above referred to adds, “and upon all such other goods and chattels as the Collector is hereby authorized to distrain,” words which may have an application in cases of goods taken in execution, or seized by virtue of any process or assignment; see below.

¹ See *ante*, p. 33.

² 43 & 44 Vict. c. 19, s. 86.

Chap. III. is restored to the owner. ¹If, at the time any duty of income tax becomes in arrear, any goods or chattels belonging to the person charged are taken in execution, or are seized by virtue of any other process, except at the suit of a landlord for rent, or by virtue of any assignment, the person by whom the goods, &c., are so taken or seized must pay to the Collector all arrears of duty due at the time of execution, or seizure, or payable for the year in which the same is levied or made, not exceeding one year's duty; and if payment is not made by him the Collector must distrain, and sell, the goods, &c., as if no such execution, or seizure, had been levied, or made.

If Payment of Duty is refused—Remedy by Committal of Defaulter.—²If any duty of income tax is not paid within ten days after demand, and no sufficient distress is to be found, the General Commissioners may, by warrant under their hands and seals, commit the person refusing to pay to prison, there to be kept without bail until payment is made, or security given for payment, of the duty, and of the cost of apprehending and conveying the defaulter to prison. ³Any person so imprisoned may be liberated upon the warrant of the General Commissioners, issued to the keeper of the prison, by the direction of the Treasury, or the Board.

¹ 43 & 44 Vict. c. 19, s. 88.

² 43 & 44 Vict. c. 19, s. 89.

³ 43 & 44 Vict. c. 19, s. 91.

If Payment of Duty is refused—Remedy by Suit in Chap. III.—the High Court.—¹ The duties when assessed may be recovered, with full costs of suit and all charges attending the same, from the person charged therewith, by suit in the High Court, as a debt due to the Crown; or by any other means by which any debt of record, or otherwise due to the Crown may at any time be sued, or prosecuted, for, or recovered; as well as by the summary means before described. A ² schedule of arrears certified to the High Court as ³ prescribed, and a ⁴ schedule of defaulters purporting to be made in pursuance of the ⁵ Taxes Management Act, 1880, and certified to the High Court under the hands of the Board, is sufficient evidence of a debt due to the Crown, and sufficient authority to a judge of the High Court to cause process to be issued against any defaulter named in any such schedule, to levy the sum in arrear and unpaid by the defaulter, and the production of a schedule of arrears or of defaulters purporting to be made in pursuance of the ⁵ Taxes Management Act, 1880, and purporting to contain the name of a defaulter, is sufficient evidence of the sum mentioned in such schedule having been duly charged and assessed upon

¹ 43 & 44 Vict. c. 19, s. 111.

² As to schedules of arrears, see *post*, p. 208.

³ That is, in the form prescribed by the Board. 43 & 44 Vict. c. 19, s. 15 (2).

⁴ As to the schedules of defaulters, see *post*, pp. 210, 211.

⁵ 43 & 44 Vict. c. 19.

Chap. III. such defaulter, and of the same being due and owing, and in arrear, to the Crown.

Proceeding in case the Person charged removes from Place of Assessment.—¹ In case a person charged to any duty of income tax removes from the parish, &c. in which the assessment was made without paying the duty charged upon him, the General Commissioners for such parish, &c. sign, and transmit by the intervention of the Board, a certificate of the facts to the General Commissioners for the parish, &c. to which the defaulter has removed, and the last-mentioned Commissioners raise and levy the duty, and cause it to be paid to the Collector of Inland Revenue. If the removal is only from one parish, &c. within the jurisdiction of one set of Commissioners to another parish within the same jurisdiction, the Commissioners authorize the Collector for such last-mentioned parish, &c., by certificate, to raise and levy the duty.

Account by Collectors.—² The Board may appoint in each year days of receipt for each county, ³ division,

¹ 43 & 44 Vict. c. 19, s. 90.

² 43 & 44 Vict. c. 19, s. 100.

³ “Division” means and includes any hundred, rape, lathe, stewartry, or district, or any place of separate jurisdiction under the Land Tax Acts. 43 & 44 Vict. c. 19, s. 5.

parish, or ¹ group. ² On the appointed day, which Chap. III. will be some day after the 1st of January in every year, every Collector must account for the full amount of the duties given him in charge to collect; but, if required by the Board to do so, he must remit weekly or oftener to the Exchequer, in anticipation of the receipt, the amount of his collection, in the manner prescribed by the Board. He must ³ on the appointed day of receipt (1) produce to the Collector of Inland Revenue, or to the Surveyor, whenever he is required by either of them to do so, his duplicate of assessment, showing the sums collected by him duly written off; (2) pay over to the Collector of Inland Revenue, or otherwise, as, and if so, required to do by the Board, all moneys received by him and then in his hands and unaccounted for; for which he is entitled to receive receipts or discharges; (3) deliver then, or within three days afterwards, to the General Commissioners ⁴schedules of arrears in the ⁵ prescribed form, with affidavits subscribed, to be made on his oath, or affirmation, and signed by him, setting forth the christian and surname of each defaulter in his parish, or group, from whom he has demanded, but

Collector
on ap-
pointed
day must,
1. Pro-
duce his
duplicate
of assess-
ment;
2. Pay
over
moneys
received, if
required;
3. Deliver
schedules
of arrears.

¹ "Group" means any parishes united or grouped for the purposes of collection of the duties of income tax. 43 & 44 Vict. c. 19, s. 5.

² 43 & 44 Vict. c. 19, ss. 100, 101.

³ 43 & 44 Vict. c. 19, s. 103.

⁴ As to the schedules of arrears, see *post*, p. 208.

⁵ That is, in the form prescribed by the Board. 43 & 44 Vict. c. 19, s. 15 (2).

Chap. III. has not then received, payment of the duties given him in charge to collect, and the respective sums then in arrear from each such defaulter. The Collector must also answer any lawful question demanded of him by the Collector of Inland Revenue, or Surveyor, touching the duties given him in charge to collect; and ¹ may be put upon his oath, or made to affirm if he is a person allowed by law to substitute an affirmation for an oath, by the Collector of Inland Revenue, who is authorized to administer an oath or affirmation for the purpose. The substance of the answers given by the Collector to the questions put to him must be reduced into writing in his presence, and he must then sign them.

The Schedules of Arrears.—² The schedule of arrears, being made, and delivered to the General Commissioners, ³as we have described, remains with them for forty days, and during that period the Collector gives notice to the defaulters named in it, who are at liberty within the same period to pay their arrears with costs, and have the arrears discharged from the schedule. If they continue in default, the Commissioners may use any lawful means, within the same period of forty days, for the recovery of the arrears; ⁴but at the expiration of that period the schedule of

¹ 43 & 44 Vict. c. 19, s. 104.

² 43 & 44 Vict. c. 19, s. 105.

³ *Ante*, p. 207.

⁴ 43 & 44 Vict. c. 19, s. 111.

arrears may be certified to the High Court by either **Chap. III.**
the Collector of Inland Revenue, or the General
Commissioners ;¹ the schedule itself, when so certified,
being transmitted to the Board. The Board, again,
on receiving the schedule of arrears, may direct the
Collector to use any method allowed by law for the
recovery of any arrears therein included ; but other-
wise they forward the schedule to the High Court,
certifying it under their hands ;² and the schedule so
certified to the High Court by the General Commis-
sioners and by the Board is sufficient evidence of a
debt due to the Crown, and sufficient authority to a
judge of the High Court to cause process to be issued
against any defaulter named in the schedule to levy
the sum in arrear, and unpaid by him.

Schedules of Deficiencies.—Besides the schedule of
arrears, which he is bound to return,³ every Collector
must also make out a schedule of deficiencies, which
is to contain the names, surnames, and places of
abode of all persons within his district of collection
from whom he has not been able to collect the duties
for any of the following causes, viz. :—

1. That the defaulter became bankrupt before the ^{First} day on which the duties became payable, and had not ^{cause:} ^{Bank-} goods and chattels sufficient whereon to levy such ^{ruptey of} ^{defaulter.} duties within the district of collection, at any time since the duties became payable.

¹ 43 & 44 Vict. c. 19, s. 106.

² 43 & 44 Vict. c. 19, s. 111.

³ 43 & 44 Vict. c. 19, ss. 108, 109.

Chap. III. 2. That the defaulter removed from the district of collection before the day on which the duties became payable, without leaving therein goods and chattels sufficient as aforesaid.

Second cause: Removal of defaulter. 3. That there were not, nor are, any goods and chattels of the defaulter whereon the duties, or any part thereof, might, or may, be levied.

Third cause: That defaulter has no goods and chattels.

An oath or affirmation is indorsed, and certified, on the schedule, that the sum for which the defaulter is returned in default is due, and wholly unpaid, either to the Collector, or to any other person for the Collector, to the best of the knowledge and belief of the Collector; and that the return is made for one or other of the causes above mentioned; and the schedule must contain, besides the particulars aforesaid, the particular reason for returning the defaulter, and the particulars of the sum or sums charged upon him. The oath, or affirmation, indorsed upon the schedule is made, or subscribed, by the Collector.

Schedules of Discharge and Default.—¹The General Commissioners, after examining the Collector upon oath, or affirmation, (1) ascertain the sums which, according to the ²Income Tax Acts, or the ³Taxes

¹ 43 & 44 Vict. c. 19, ss. 108, 109.

² "Any Act, or part of any Act, relating to the assessment of any person, land, tenement, heritage, property, or profits whatsoever, to the income tax." 43 & 44 Vict. c. 19, s. 5. The phrase used in the place under reference is "the Tax Acts," the definition of which includes the definition above given of "Income Tax Acts."

³ 43 & 44 Vict. c. 19.

Management Act, 1880, have been, or may be, dis- Chap. III.
 charged for a cause specially allowed by such Acts,
 and make out their schedules of discharge containing
 such sums; (2) make out their schedules of defaulters
 containing (a) the sums with which each defaulter
 ought to be charged, and the particulars thereof;
 and (b) the sums which have not been collected by
 reason of the Collector's neglect, and ¹for which he
 shall be held liable, and ²which ought to be re-
 assessed on the parish. The schedules so made out
 by the General Commissioners are transmitted to the
 Board, and deposited at their head office.

Insuper.—³ In case there is a failure on the part of
 the persons responsible for doing any of the following
 acts, viz.:—

1. Assessing the duties in any parish⁴—
2. Returning the duplicates of the assessments⁵ of
 the duties made for any parish—
3. Raising or paying the several sums charged
 upon any person for the duties in any parish⁶—to do
 any of them, the Board may at any time after such
 failure, set *insuper* (as it is called) all sums appearing
 in arrear, and make a return by certificate thereof to

¹ See 43 & 44 Vict. c. 19, s. 112 (3).

² See 43 & 44 Vict. c. 19, s. 112 (4), and *post*, p. 212.

³ 43 & 44 Vict. c. 19, s. 112.

⁴ As to assessment, see Chap. III., sub-sect. 1.

⁵ See *ante*, p. 196.

⁶ This default would be on the part either of Collectors or
 persons charged with duty.

Chap. III. be delivered to the ¹Queen's Remembrancer. The return must specify ²certain particulars; and any persons charged with the duties who may be in default are liable to process; and, in the case of a parish set *insuper* for a sum not accounted for to the Collector of Inland Revenue, and contained in the duplicate of assessment delivered to him, the parish is liable to be re-assessed, except when by special enactment relieved from liability to re-assessment.³

When
parish
liable to
reassess-
ment.

Collection of Duties of Income Tax assessed upon Railways.—⁴The duties assessed upon railway companies in England are paid by four quarterly payments, namely, the first quarterly payment on or before the 20th day of June; and the second, third,

¹ The "Queen's Remembrancer" is an officer of the Supreme Court for revenue purposes.

² See 43 & 44 Vict. c. 19, s. 112. The particulars to be specified are—(1) the parish, division, and county where the failure has happened; (2) the cause of such failure; (3) the names of any two or more of the General Commissioners for the division in which the failure has happened; (4) the names of the Assessors, and Collectors, and the several persons belonging to such parish charged with the duties, who have failed to pay them.

³ No parish is answerable for the acts, neglects, or defaults of a Collector appointed by the Board, or who gives security to the Crown. 43 & 44 Vict. c. 19, s. 79 (1), *ante*, p. 37.

⁴ 43 & 44 Vict. c. 19, s. 95. We have, for convenience sake, mentioned the assessment of railway companies in England at this place; but it appears from the enactment just quoted that such assessment is now made under Schedule D.

and fourth quarterly payments, on or before the ^{Chap. III.} 20th days of September, December, and March, respectively, in each year. The duties upon railway companies are assessed by the Special Commissioners, who, when authorized to make, sign, or allow, any assessment, have all the powers and authorities in relation to assessment, appeal, collection of duty, which the General Commissioners have.

SECTION II.—SCHEDULE B.

ASSESSMENT AND COLLECTION.¹

What we have said of the assessment and collection of duties charged under Schedule A. is equally applicable, *mutatis mutandis*, to duties charged under Schedule B.

SECTION III.—SCHEDULE C.

This schedule, it must be remembered, comprises interest, annuities, and dividends, payable out of public revenue. The annuities, &c., are paid through certain persons, or corporations, entrusted with the duty of paying the same, who are directed to deduct the tax from the annuity, &c., before paying it to the person entitled. Those mentioned in the ²Income Tax Act, 1842, and in the second section of the Act 5 & 6 Vict. c. 80 (and the list is no doubt an exhaustive

¹ See note ¹, p. 196, *ante*.

² 5 & 6 Vict. c. 35.

Chap. III. one) are ¹The Bank of England, ²The Commissioners for Reduction of the National Debt, ³The Bank of Ireland, ⁴persons entrusted with the payment of annuities, &c., payable out of the revenue of any colony or settlement, ⁵persons entrusted with the payment of annuities, &c., payable out of the revenue of any foreign state, or acting therein as agents, or in any other character, and ⁶the Exchequer or other public office. The methods of assessing, and collecting, the duties under Schedule C. may conveniently be described together. They differ, as will be seen, very materially from the methods employed to assess, and collect, the duties under Schedules A. and B.

ASSESSMENT AND COLLECTION.⁷

Who are Commissioners for Assessing the Duties under Schedule C.—⁸ The Special Commissioners whom we now proceed to mention, are, with reference to the duties placed under their jurisdiction, respectively, the Commissioners appointed to act in all matters

¹ 5 & 6 Vict. c. 35, s. 89.

² *Ibid.*

³ 5 & 6 Vict. c. 35, s. 90. This section was repealed by the Statute Law Revision Act, 1874, No. 2 (37 & 38 Vict. c. 96), but see 16 & 17 Vict. c. 34, s. 11.

⁴ 5 & 6 Vict. c. 35, s. 96.

⁵ 5 & 6 Vict. c. 80, s. 2.

⁶ 5 & 6 Vict. c. 35, s. 97.

⁷ See note ¹, p. 196, *ante*.

⁸ 5 & 6 Vict. c. 35, s. 23.

relating thereto,¹ but they have no power to summon Chap. III. any person to be examined before them. All enquiries by, or before, such Special Commissioners are answered by affidavit, taken before one of the General Commissioners in his district.

Annuities, &c. payable by the Bank of England.—The Governor and Directors of the Company of the Bank of England² are, as³ we have said, Commissioners for the purpose of assessing and charging the duties payable under the⁴ Income Tax Acts in respect of all annuities payable to the company at the receipt of the Exchequer, and the profits attached to the same and divided amongst the several proprietors, and in respect of all annuities, dividends, and shares of annuities, payable out of the revenue of the United Kingdom, and entrusted to the said Governor and Company for payment,⁵ including dividends paid upon coupons attached to stock certificates issued under the⁶ National Debt Act, 1870.⁷ As often

¹ The Special Commissioners have this power when acting as General Commissioners (see *ante*, p. 18), or on appeal, as in certain cases arising under Schedule D. (see *post*, pp. 302, 303). 5 & 6 Vict. c. 35, s. 23.

² 5 & 6 Vict. c. 35, s. 24.

³ See *ante*, pp. 6, 7.

⁴ “Any Act, or part of any Act, relating to the assessment of any person, land, tenement, heritage, property, or profits whatever, to the income tax.” See *ante*, p. 210, note².

⁵ 33 & 34 Vict. c. 71, s. 36.

⁶ 33 & 34 Vict. c. 71.

⁷ 5 & 6 Vict. c. 35, s. 89.

Chap. III. as payments become due upon the said annuities, &c., true accounts are made out in writing at the Bank, in books provided for the purpose, of the annuities (with the profits attached to the same) which are paid to the said company in respect of its corporate stock, and of the annuities, &c., entrusted to the company for payment, and of the amount of duty chargeable thereon. In these books the separate account of each person entitled to any share of the said annuities, &c., is distinguished, so that each such share may be distinctly assessed; and the Governor and Directors of the Company of the Bank of England, acting in their capacity as such Commissioners as aforesaid, make an assessment of the duty which appears to be payable on such accounts to the best of their judgment, and then deliver the books of assessment, signed by them, to the ¹Commissioners for Special Purposes. ²The last-named Commissioners cause two certificates on parchment to be made out under their hands and seals, containing the total amounts of duty, and of the annuities, &c. upon which the duty is charged, contained in each assessment, and transmit one of such certificates to the Governor and Directors of the Company, as Commissioners for making the assessment, and the other certificate to the ³Head Officer of Inland Revenue.

¹ That is, the Board, and such persons as the Treasury appoint. *Ante*, pp. 5, 6.

² 5 & 6 Vict. c. 35, s. 89.

³ The Receiver-General of Inland Revenue.

¹The Governor and Directors of the Bank of England, Chap. III. on receiving notice from the Special Commissioners by certificate of the amount of each assessment, set apart and retain the amount of duty so assessed from each annuity, &c., before paying the same to the person entitled, who ²is bound to allow what is so set apart and retained under penalty of a forfeiture of fifty pounds; and ³all moneys so set apart and retained are paid into an account kept at the Bank of England with the Receiver-General of Inland Revenue.

Annuities, &c. payable by the Bank of Ireland.—The Governor and Directors of the Company of the Bank of Ireland ⁴are Commissioners for assessing and charging the duties payable under the ⁵Income Tax Acts, in respect of all annuities, dividends, and shares of annuities, payable by them out of the revenue of the United Kingdom. ⁶The duties chargeable upon such annuities, &c., are assessed and charged by the

¹ 5 & 6 Vict. c. 35, s. 93.

² 5 & 6 Vict. c. 35, s. 103.

³ 5 & 6 Vict. c. 35, s. 94; 12 & 13 Vict. c. 1, s. 17.

⁴ 16 & 17 Vict. c. 34, s. 11.

⁵ “Any Act, or part of any Act, relating to the assessment of any person, land, tenement, heritage, property, or profits whatever, to the income tax.” See *ante*, p. 210, note ².

⁶ 5 & 6 Vict. c. 35, ss. 91, 93, 94. Sect. 91 is repealed by the Statute Law Revision Act, 1874, No. 2 (37 & 38 Vict. c. 96), but the exemption of persons resident in Ireland from liability to the duties under this schedule is abrogated by 16 & 17 Vict. c. 34, s. 11.

Chap. III. Governor and Directors of the Company of the Bank of Ireland, communicated to the ¹Special Commissioners certified by them, and afterwards set apart and retained, and paid into the account kept at the Bank of England with the Receiver-General of Inland Revenue, in a manner precisely similar to ²that in which the duties chargeable upon annuities, &c. entrusted for payment to the Bank of England are dealt with.

Annuities payable by the Commissioners for the Reduction of the National Debt.—The Commissioners for the Reduction of the National Debt ³are, as ⁴we have said, Commissioners for assessing and charging the duties payable under the ⁵Income Tax Acts in respect of all annuities payable by them out of the revenue of the United Kingdom. The duties chargeable upon such annuities ⁶are assessed and charged by the Commissioners for the Reduction of the National Debt, communicated to the Special Commissioners, certified by them, and afterwards set apart and retained, and paid into the account kept at

¹ The Board, and such persons as the Treasury appoint. *Ante*, pp. 5, 6.

² See *ante*, pp. 215—217.

³ 5 & 6 Vict. c. 35, s. 28.

⁴ *Ante*, p. 7.

⁵ “Any Act, or part of any Act, relating to the assessment of any person, land, tenement, heritage, property, or profits whatever, to the income tax.” See *ante*, p. 210, note ².

⁶ 5 & 6 Vict. c. 35, ss. 89, 94; 12 & 13 Vict. c. 1, s. 17.

the Bank of England with the Receiver-General of Inland Revenue in a manner precisely similar to ¹that in which the duties charged upon annuities, &c. entrusted for payment to the Bank of England are dealt with by them.

Annuities payable out of the Public Revenue of any Colony, &c.—² The Special Commissioners are Commissioners for assessing the duties in respect of annuities, dividends, and shares of annuities, payable ³out of the Revenue of any foreign state, or

¹ See *ante*, pp. 215—217.

² The Board, and such persons as the Treasury appoint. *Ante*, pp. 5, 6.

³ 5 & 6 Vict. c. 35, ss. 29, 96; 5 & 6 Vict. c. 80, s. 2. See *ante*, p. 97. A somewhat extended application is given to these sections by 29 & 30 Vict. c. 36, s. 9. The following are to be deemed persons entrusted with the payment of such dividends—(1) The agent or other person having the ordinary custody of the book or list in which the name of the person entitled to the dividend, &c. is entered or registered (where such is the case) (29 & 30 Vict. c. 36, s. 9); (2) any banker, or person acting as a banker, who sells or otherwise realizes, coupons or warrants for, or bills of exchange purported to be drawn or made in payment of, any dividends (save such as are payable in the United Kingdom only), and pays over the proceeds to any person, or carries the same to his account; (3) any person who, by means of coupons received from any other person, or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom; (4) any dealer in coupons who purchases coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons (48 & 49 Vict. c. 35, s. 26). The term “coupons” includes warrants for, or bills

Chap. III. ¹out of the public revenue of any colony, or settlement, belonging to the Crown of the United Kingdom, ²or out of the stocks, funds, or shares, of any foreign or ³colonial company, which are entrusted for payment to any person other than the Governor and Company of the Bank of England and the Commissioners for the Reduction of the National Debt; and every such person entrusted with the payment of any such annuities, &c., must deliver into the Head Office of Inland Revenue in England an account in writing, containing the names and residences of the persons to whom such annuities are payable, and a description of such annuities, &c., within one month after the accounts have been required by public notice in the London Gazette; and must also, on demand by the inspector appointed for that purpose by the Board, deliver to him for the use of the Special Commissioners true accounts of the

of exchange purporting to be drawn or made in payment of any dividends. Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 24. A person entrusted with the payment of dividends, who performs all necessary acts, so that the income tax thereon may be assessed and paid, is entitled to receive as remuneration an allowance of so much (not being less than threepence) in the pound of the amount paid as may from time to time be fixed by the Treasury. But no banker is to be obliged to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.
Id. s. 25.

¹ 5 & 6 Vict. c. 35, s. 96.

² 16 & 17 Vict. c. 34, s. 10.

³ 24 & 25 Vict. c. 36, s. 9.

amounts of the annuities, &c., payable by him. The ^{Chap. III.} Special Commissioners assess the duties upon such annuities, &c., and give notice of the assessment to the persons entrusted with payment of the annuities, &c., who must pay the duties thereon on behalf of the persons entitled thereto, out of the moneys in their hands, into the account kept at the Bank of England with the Receiver-General of Inland Revenue, under a penalty of 100*l.* over and above the duties charged, for payment of which they are also personally answerable, and are acquitted of the duties paid by them ¹as in the case of annuities paid by the Bank of England.

Interest payable out of the Public Revenue on Securities issued at the Exchequer or other Public Office.—

²The Commissioners for assessing the profits of offices in the Exchequer, or other public office, ³are Commissioners also for assessing the duties upon any interest payable out of the public revenue on securities issued at the Exchequer, or other public office. They act in that capacity in the same manner as ⁴the Commissioners who assess the profits arising from annuities payable out of the public revenue in other cases. The Commissioners authorized to act in relation to such securities as aforesaid appoint Assessors, and Collectors, of the duties arising from such securities from amongst

¹ *Ante*, pp. 210—217.

² *Ante*, pp. 6, 7.

³ 5 & 6 Vict. c. 35, s. 97.

⁴ *Ante*, pp. 215—217.

Chap. III. the officers entrusted with the payment or discharge of such securities; and the Assessors, and Collectors, so appointed compute the duties upon the securities at the time the same are paid or discharged; and after computation of the duties enter the same in a certificate of assessment, and certify the same to the proper officer appointed for the payment or discharge of such securities. Such last-mentioned officer is empowered to stop and detain the duty, and to pay the same into the Bank of England, to the credit of the Receiver-General of Inland Revenue, in discharge of the assessment. Every person receiving, or purchasing, any such security in circulation, with current interest thereon, is entitled to deduct from such interest the proportion of duty which will become chargeable thereon, as if the interest were then due, and charged with the said duty. ¹ The penalty for not allowing any such deduction is the same as in other cases of payment of interest.

Small Annuities, &c.—The following general provision with regard to annuities, dividends, or shares of annuities, the half-yearly payment on which does not amount to 50s., must be noticed, viz.:—² that the respective Commissioners for assessing annuities, &c. chargeable under Schedule C. are not required to make any assessments upon such small annuities as above mentioned, but they must be accounted for,

¹ *Ante*, p. 199.

² 5 & 6 Vict. c. 35, s. 95.

and charged, under the ¹ third case of Schedule D., *Chap. III.*
 by which profits of an uncertain value are directed to
 be charged, ² except in the case of dividends payable
 upon coupons annexed to stock certificates issued
 under the ³ National Debt Act, 1870, from which
 income tax is to be deducted, although the dividend
 represented by the coupon does not amount to 50s.

Time for Payment.—The duties under Schedule C.
 being payable by way of deduction, ⁴ are not governed
 by the general rule, under which duties payable
 otherwise than by deduction become payable on the
 1st of January in every year, but ⁵ must be deducted
 out of the moneys in respect of which they are
 charged at the times when such moneys become
 payable.

SECTION IV.—SCHEDULE D.

This schedule, it will be remembered, is to a large extent, although not exclusively, supplementary to the other schedules; and comprises (1) undertakings in connection with lands, &c., not mentioned in Schedule A.; (2) profits of professions not contained in any other schedule; (3) profits of an uncertain annual value not charged in Schedule A.; (4) income

¹ *Ante*, p. 156.

² 33 & 34 Vict. c. 71, s. 36.

³ 33 & 34 Vict. c. 71.

⁴ 43 & 44 Vict. c. 19, s. 82.

⁵ 5 & 6 Vict. c. 35, s. 158.

Chap. III. arising from colonial and foreign securities; (5) income arising from colonial and foreign possessions; (6) profits not falling under any of the preceding heads. The provisions, therefore, for the assessment and collection of the duties under this schedule are many and various. We will deal with the provisions for assessment, and the provisions for collection, separately.

SUB-SECTION 1.—ASSESSMENT.

Period for which Assessment made.—¹ Every assessment is made for the year commencing on the 6th day of April in any year, and ending on the 5th day of April following, each of such days being reckoned inclusively.

Place of Charge.—² The place in which the duty is to be charged depends to some extent upon the character of the person charged, thus:—

1. Householder *not* a person engaged in any trade, manufacture, adventure, concern, profession, employment, or vocation, is charged in the parish or place in which his dwelling-house is situated—
2. Person engaged in trade, &c. is charged in the parish or place in which such trade, &c., is carried on or exercised—
3. Person not a householder, and not engaged in any trade, &c., who has any place of

¹ 43 & 44 Vict. c. 19, s. 48.

² 5 & 6 Vict. c. 35, s. 106.

ordinary residence, is charged in the parish, or place, Chap. III.
in which he ordinarily resides—
holder,
and not
engaged in
trade, but
having an
ordinary
residence.

4. Every person not before described is charged in the parish, or place, in which he resides at the time the general notices (described *ante*, p. 174) are given—
and, in order to ascertain the place of charge, every- 4. Persons
one who delivers a list or statement, as described *ante*, not before
pp. 175, 178, is required to deliver at the same time described.
a declaration in writing, signed by him, declaring in what place he is chargeable ; and if he is engaged in any trade, &c., and, if so, where it is carried on. But we must supplement what we have said about the place of charge by noticing the following provisions, viz. :—

1. ¹That where any trade is carried on in Great Britain by the manufacture of goods, wares, or merchandise, the assessment must be at the place of manufacture, though the sale of such goods, &c., is elsewhere.

2. ¹That every person not engaged in any trade, &c., who has two or more houses, or places, at which he is ordinarily resident, must be charged in the parish, or place, in which he is ordinarily resident at the beginning of each year, as the year is computed for the purposes of the Income Tax Acts, or in which he comes ordinarily to reside after such general notices as aforesaid are given.

¹ 5 & 6 Vict. c. 35, s. 106. As to the computation of the year, see *ante*, p. 1.

Chap. III. 3. ¹That the duty to be assessed in respect of the profits or gains arising from foreign possessions, or foreign securities, or in "the British plantations in America," or in any other of her Majesty's dominions, may be assessed in that one of the following places—London, Bristol, Liverpool, and Glasgow—at, or nearest to, which such property shall have been first imported into Great Britain, or at, or nearest to, which the person who has received remittances, money, or value from thence, and arising from property not imported as aforesaid, resides, as if such duty had been assessed upon the profits or gains arising from trade or manufacture carried on in such one of the said places: Provided that

(a) Profits, &c. arising from foreign, or colonial, possessions, imported partly into port of London, partly into outports of Bristol, Liverpool, or Glasgow. (a) Whenever the produce, or the profits or gains, arising from such possessions, or securities, shall have been imported partly into the port of London, and partly into the outports of Bristol, Liverpool, or Glasgow, or shall have been received by any person partly in the City of London, and partly in any of the said outports, within the period of making up the account on which the duty is chargeable, the whole of the duty must be assessed and charged by the Commissioners acting for the City of London.

(b) Profits, &c. of foreign, or colonial, possessions, imported (b) Whenever such produce, &c., shall have been within such period wholly imported into, or received at, the said outports of Bristol, Liverpool, and Glasgow, and different parts thereof, shall have been

¹ 5 & 6 Vict. c. 35, s. 108.

imported into, or received at, two or more of such Chap. III.
 outports, the duty chargeable thereon must be assessed wholly
 and charged in one account at such one of the said
 places at which the major part in value of such pro-
 duce, &c., has been so imported or received.

4. ¹That the profits arising from the London Docks,
 the East and West India Docks, and the Saint
 Katharine's Dock must be assessed by the Commis-
 sioners acting for the City of London.

*Who are Commissioners for assessing Duty under Schedule D.—*Subject to the right which, as ²we shall presently explain, the person to be charged has of choosing the kind of Commissioners by whom he shall be assessed, and as a general rule, ³the General Commissioners act in all matters relating to the duties in Schedule D.; ⁴except in the case of rail-ways, the annual value of, or profits and gains arising from, which, are assessed by the Special Commissi-
 sioners; and except as follows:—

1. ⁵The Governor and Directors of the Company of the Bank of England are Commissioners for assessing 1. Duties upon profits, &c. of Bank of England and charging the duties in respect of all profits of England

¹ 5 & 6 Vict. c. 35, s. 109.

² *Post*, p. 244.

³ 5 & 6 Vict. c. 35, s. 22. In certain particulars relating to the assessment of the duties under Schedule D., the Additional Commissioners, or the General Commissioners acting as Additional Commissioners, act. See *post*, pp. 234 *et seq.*

⁴ 29 & 30 Vict. c. 36, s. 8.

⁵ 5 & 6 Vict. c. 35, s. 24.

Chap. III. the company chargeable under Schedule D., and assessed by its governor and directors. of all pensions and salaries payable by the company, and of all profits chargeable with duty and arising within any office or department under the management and control of the said Governor and Company.

2. Duties upon salaries, &c. payable by Commissioners for Reduction of National Debt assessed by them. 2. ¹The Commissioners for the Reduction of the National Debt are in like manner Commissioners for assessing and charging the duties in respect of all salaries and pensions payable in any office or department under their management or control.

3. Duties upon dividends, &c. payable out of or in respect of stock, &c. of any foreign company, &c. assessed by the Special Commissioners. 3. ²The Special Commissioners ³are Commissioners for assessing and charging the duties upon all interest, dividends, or other annual payments, payable out of, or in respect of, the stocks, funds, or shares of any foreign company, society, adventure, or concern, or in respect of any security of any such company, &c., and entrusted for payment to any person, corporation, &c., in this country.

4. Certain duties assessed by 4. ⁴Subject to a certain power of control in the Treasury (who may determine that in any particular department, not being one of her Majesty's Courts

¹ 5 & 6 Vict. c. 35, s. 28.

² That is, the Board, and such persons as are appointed by the Treasury. *Ante*, pp. 5, 6.

³ 16 & 17 Vict. c. 34, s. 10. "Person entrusted with payment" in this section has the enlarged meaning given to the same phrase in sect. 96 of 5 & 6 Vict. c. 35, and sect. 2 of 5 & 6 Vict. c. 80. See *ante*, p. 219, note ³. 48 & 49 Vict. c. 51, s. 26.

⁴ 5 & 6 Vict. c. 35, s. 30.

civil, judicial, or criminal, or an ecclesiastical, or ^{Chap. III.} commissary, Court, Commissioners shall not be ap- the Lord pointed; and how the officers of such department ^{Chanc-} cellor, &c. shall be assessed), the Lord Chancellor, the judges, and the principal officer, or officers, of each Court, or public department of office under her Majesty, whether civil, judicial, or criminal, ecclesiastical or commissary, military or naval, respectively, have authority to appoint Commissioners in relation to the offices in each Court, or department, respectively from amongst the officers of each Court, or department of office, respectively. The persons so appointed, or any three or more of them, not in any case exceeding seven, are Commissioners in relation to the offices in each such Court, or department of office, respectively. Where the Commissioners of one department act in relation to any other department, the Assessors, and Collectors, for such other department are appointed from the officers of such last-mentioned department. Notice of the appointment of Commissioners must be given to the Treasury within a certain time; and if no appointment of Commissioners is made within the time limited, of which failure to notify the appointment in due time is conclusive proof, the Commissioners acting in their several districts in relation to the duties upon lands and tenements, on notice of the default being given to them, act also in relation to the duties on offices, and employments of profit exercised within the same districts respectively.

Chap. III. 5. ¹The Speaker, and the principal clerk, of either
5. Certain House of Parliament, the principal, or other, officers
duties assessed in the several counties palatine, and the Duchy of
by the Cornwall, or in any ecclesiastical Court, or in any
Speaker and inferior Court of Justice, whether of law, or equity,
principal clerks or criminal, or justiciary, or under any ecclesiastical
of the body or corporation, whether aggregate or sole,
Houses of appoint Commissioners from amongst the persons
Parlia- executing offices in either House of Parliament, or in
ment, &c. their respective departments of office, and the persons
so appointed, or any three of them, not in any case
exceeding seven, are Commissioners in respect of the
places, offices, and employments of profit, in each
House of Parliament, and in each such department,
respectively. The names of the persons so ap-
pointed Commissioners must be transmitted to the
Treasury within a certain time, and in default
the Treasury appoint Commissioners; or, if the
Treasury make no appointment, the Commissioners
acting in relation to the duties on lands and
tenements in their several districts, on notice of the
default being given to them, act in relation to the
duties on such offices, or employments of profit,
exercised within the same districts respectively. ²If
in any Court, or department of office, there are not a
sufficient number of officers proper to be appointed
Commissioners, the Treasury may direct that the

¹ 5 & 6 Vict. c. 35, s. 31.

² 16 & 17 Vict. c. 34, s. 26.

Commissioners for any other department may act; Chap. III.
and in default of both appointment and direction the
General Commissioners in their respective districts
act.

*Where the Assessment is made by the General Com-
missioners or by the Special Commissioners at
the Request of the Person chargeable.*

Notices, Lists, and Statements, &c.—What we have said of ¹the period for which the assessment is made, of ²the mode of proceeding to obtain a return, of ³the persons who are required to make out lists, &c., and of ⁴the proceedings taken by the Assessor after notices given, in treating of the assessment of the duties under Schedule A., is applicable in the case of the duties in Schedule D. The only qualification that we have to introduce is, ⁵that where the General Commissioners acting for any parish, or place, have had inserted in the notice that an office is opened for the receipt of statements of profits chargeable under Schedule D., and a proper person appointed to receive the same, and the time and place of attendance, in that case the statements are to be delivered at, and to, the appointed office, and person; ⁶and that the statement may be delivered sealed up, if superscribed with

¹ *Ante*, p. 186.

² *Ante*, pp. 174, 175.

³ *Ante*, pp. 175—177.

⁴ *Ante*, pp. 185 *et seq.*

⁵ 5 & 6 Vict. c. 35, s. 49.

⁶ 5 & 6 Vict. c. 35, s. 110.

Chap. III. the name, and place of abode, of, or place of exercising the profession, or carrying on the trade, by, the person by whom the same is made.

Trade or
profession
carried on
jointly or
in part-
nership.

Where Trade, &c., is carried on by two or more Persons, jointly.—¹ Where a trade or profession is carried on by two or more persons jointly, the return must be made and stated jointly, and the duty is computed in one sum, and separately from any other duty chargeable on the same persons, or either, or any of them. The partner who is first named in the deed, or other instrument, of partnership, or, if there is no such deed or instrument, the partner who is named singly, or with precedence to the other partner or partners, in the usual style of the partnership, or if such precedent partner is not an acting partner, the preceding acting partner, if resident in Great Britain, must make the return on behalf of himself and of the other partner, or partners. If no such partner is resident in Great Britain the return must be made by the agent, manager, or factor, resident in Great Britain, for the partners. No separate return may be made in the case of a partnership by any partner, except for the purpose of claiming exemption, or of accounting for a separate concern. ²If amongst any persons engaged in any trade or profession in partnership any change takes place in the partnership by

Change
in part-
nership.

¹ 5 & 6 Vict. c. 35, s. 100, third rule applying to first and second cases.

² *Ibid.*, fourth rule applying to first and second cases.

death, or dissolution of partnership, as to all or any ^{Chap. III.} of the partners, or by admitting any other partner into the partnership, before the time of making the assessment, or within the period for which the assessment is made, or if any person has succeeded to any trade, or profession, within the respective periods aforesaid, the duty is charged according to the profits and gains of the business derived during the period of assessment notwithstanding such change, or succession, unless the partners, or the person succeeding to the business, can prove to the satisfaction of the Commissioners that the profits and gains of the business have fallen short, or will fall short, from some specific cause, since the change, or succession, took place, or by reason thereof. ¹ Every statement of profits chargeable under Schedule D. must include every source chargeable thereunder on the person delivering the statement on his own account, or on account of any other person. But in cases where the same person is engaged in separate partnerships, or in different trades, &c., in more places than one, a separate assessment is made in respect of each trade, &c., at the place where such trade, &c., if singly carried on, ought to be charged. Every statement made on behalf of any other person for which such person is chargeable, or on behalf of any corporation, fellowship, fraternity, company, or society, must include every source of

Statement
of profits
must in-
clude every
source.

¹ 5 & 6 Vict. c. 35, s. 100, fifth rule applying to first and second cases.

Chap. III. profit chargeable under Schedule D., and must be delivered in the division in which such person, corporation, &c., would be chargeable if acting on his, or their, own behalf.

Case of
*The
Rhyope
Coal Co.*

The Rhyope Coal Company was an ordinary partnership for the purpose of working certain mines in the county of Durham until the 21st December, 1875, when the assets of the company were sold to the Rhyope Coal Company, Limited. The shareholders in the new company were the partners in the old; the only change effected being that the old partners were incorporated as a limited company, in which they held the same interests as in the old company, but divided into partially paid up shares. The working of the mines never ceased. It was held that the case was within the fourth rule above stated. It was also held that an extraordinary depression in trade may be a "specific cause" within the meaning of the same rule. *Rhyope Coal Company v. Foyer*, L. R., 7 Q. B. D. 485.

Assessment in Case of Return made by Person chargeable.—If required by the person chargeable, the assessment may be made by the¹ Special Commissioners, as we shall presently explain; but otherwise² the statement is laid before the Additional Commis-

¹ That is, the Board, and such persons as the Treasury appoints. *Ante*, pp. 5, 6.

² 5 & 6 Vict. c. 35, s. 111.

sioners, or the ¹ General Commissioners acting as Additional Commissioners in their respective districts, who appoint meetings for taking all statements delivered to them into consideration. The Surveyor has power to examine such statements, and the meetings of the Commissioners are appointed within a reasonable time after the examination has been made by the Surveyor. If the Additional Commissioners are satisfied that the statements are *bonâ fide*, and properly made, and if no objection to them is made by the Surveyor, they direct an assessment to be made of the duties chargeable on such statement. The Additional Commissioners ² then cause certificates of the assessments made by them to be made out, and entered in books provided for the purpose, and sign the assessments, which are then delivered under cover and sealed up, together with the statements made by the persons assessed, to the General Commissioners; and after the expiration of fourteen days from the delivery of the certificates to the General Commissioners, and after notice of such delivery has been given to the Surveyor, the assessments are also delivered to the persons charged. ³ Any person charged, who feels himself aggrieved by an assessment made by the Additional Commissioners, may appeal to the General Commissioners,

¹ As to General Commissioners acting as Additional Commissioners, see *ante*, pp. 23, 24.

² 5 & 6 Vict. c. 35, s. 117.

³ 5 & 6 Vict. c. 35, s. 118.

Chap. III. and of this right of appeal we shall treat ¹ hereafter. If no appeal is made, and the General Commissioners approve the assessment,² they confirm the same. If, however, the Surveyor, upon examining the statement made by any person chargeable, objects to the same, and his objection is overruled by the Additional Commissioners,³ he may require such Commissioners to state specially, and sign, the case upon which the question arises, together with their determination thereon; and the case, so stated and signed, is delivered to the Surveyor, to be transmitted by him to the General Commissioners for the district, who are bound to return the case so submitted to them, with their answer thereon, with all convenient speed; and the assessment is altered, or confirmed, in accordance with the opinion of the General Commissioners.⁴ And after an assessment has been made by the Additional Commissioners, the Surveyor may at all reasonable times examine the same before it has been delivered to the General Commissioners; and, if he discovers any error therein, which in his judgment requires amendment, he may certify the same to the Additional Commissioners, who must, if sufficient cause is shown, amend the same, as in their judgment the case may require;⁵ or, if they decline to amend the assessment, the

¹ See *post*, pp. 296 *et seq.*

² 5 & 6 Vict. c. 35, s. 122.

³ 5 & 6 Vict. c. 35, s. 112.

⁴ 5 & 6 Vict. c. 35, s. 115.

⁵ 5 & 6 Vict. c. 35, s. 116.

Surveyor may state his objection in writing, and Chap. III. the Additional Commissioners must then certify the objection, and their reasons for making the assessment, and any information they have acquired bearing upon the assessment, to the General Commissioners; and the Surveyor must give notice to the person charged, in order that he may appear before the General Commissioners and support the assessment. The Additional Commissioners are not, however, bound in every case themselves to make an assessment; ¹ for they may, if they think proper, deliver to the General Commissioners the case in writing relative to the statement of the person chargeable, as it appears to them; and the General Commissioners must then enquire into the merits of the statement, and the assessment is made in accordance with their determination.

Assessment in case no Return is made by the Person chargeable.—Whenever any person, not otherwise charged to the duties, makes default in delivering a statement, or delivers a statement with which the Additional Commissioners are not satisfied, or to which the Surveyor has made an objection in writing, or whenever the Additional Commissioners have received any information of the insufficiency of a statement delivered, they must make an assessment upon such person in such sum as, according to the

¹ 5 & 6 Vict. c. 35, s. 114.

² 5 & 6 Vict. c. 35, s. 113.

Chap. III. best of their judgment, ought to be charged upon him. Such assessment is subject to appeal, as we shall ¹presently describe.

Amendment of Assessment.—²If the Surveyor discovers that any profits have been omitted from the first assessment, or that any person chargeable has not made a full and proper, or any, return, or has been undercharged in the first assessment, or has obtained any allowance, abatement, or exemption, not authorized, the Additional Commissioners must, at any time after the first assessment has been signed and allowed, but within four months after the expiration of the year to which the first assessment relates, make an assessment on any such person in an additional first assessment in such sum as, according to their judgment, ought to be charged on such person, subject to objection by the Surveyor, and ¹to appeal.

Enquiries by the General Commissioners.—³Whenever the General Commissioners are dissatisfied with any assessment returned to them by the Additional Commissioners, or require further information respecting the same, they may put any question in writing touching such assessment, or any sums which have been set against, or deducted from, the profits

¹ Post, pp. 296 *et seq.*

² 43 & 44 Vict. c. 19, s. 52.

³ 5 & 6 Vict. c. 35, s. 123.

or gains to be estimated in such assessment; and Chap. III. may demand an answer in writing from, and signed by, the person to be charged; and may issue their precept requiring true and particular answers to be given to the questions put within seven days after service of the precept; and every such person must answer according to the precept within the time limited, in writing, or, within the same time, tender himself before the General Commissioners, to be examined by them *virâ voce*; but he is permitted to give his answers in writing or *virâ voce*, as the case may be, without having taken any oath; and may object to any question, and peremptorily refuse to answer any question. The substance of such answers as he may give *virâ voce* must be reduced into writing in his presence, and read to him; and he may alter any part thereof, and alter or amend any particular contained in his answers in writing, before being called upon to verify the same on oath,¹ which the General Commissioners may afterwards, if they think it necessary, require him to do. ²The General Commissioners may also summon in like manner any person whom they may think able to give evidence respecting the assessment made upon any other person to appear before them to be examined; and may examine every such person so summoned on oath, except the clerk, agent, or servant of the person to be charged, or other person confidentially

¹ 5 & 6 Vict. c. 35, s. 124.

² 5 & 6 Vict. c. 35, s. 125.

Chap. III. intrusted, or employed, in the affairs of the person to be charged, who can only be examined in the same manner, and subject to the same restrictions, as is, or are, provided for the *vivâ voce* examination of any person touching the assessment made on him. The penalty for refusing to appear when summoned, or to be sworn, or to answer any lawful question put, is a sum not exceeding twenty pounds, and treble duty.

Where Objection made by Surveyor, and allowed by General Commissioners, a Schedule required.—

¹ Whenever the General Commissioners allow an objection to any assessment made by the Surveyor, they direct their precept ²to the person charged, to return to them within the time limited in the precept a schedule containing such particulars as the Commissioners shall demand, for their information ; and the schedule must be delivered complete to the satisfaction of the Commissioners. The precept is delivered to the person to whom it is directed, or left at his last or usual place of abode, or if he has removed from the jurisdiction of the Commissioners, or cannot be found, or if his place of abode is not known, the precept is fixed on or near to the door of the church or chapel of the place where the Commis-

¹ 5 & 6 Vict. c. 35, s. 120.

² The section mentions only "the person appealing." But the schedule is required, not only in the case of an appeal (as to which see *post*, pp. 298 *et seq.*), but also in the case mentioned in the text.

sioners meet in execution of their office; and the ^{Chap. III.} precept is then binding upon the person to whom it is directed, and he must make the required return within the time limited, under ¹a penalty of a sum not exceeding twenty pounds and treble duty. ²The Surveyor has free access at all reasonable times to the return, and may take copies, or extracts, of or from the same as he thinks necessary; and ³he may, within a reasonable time to be allowed by the General Commissioners, after he has had examination of the schedule, object to the same or any part thereof in writing. If the Surveyor objects, he must deliver a notice in writing of the objection to the person to be charged, or leave the same at the last, or usual, place of abode of such person, under cover, sealed up, and directed to him, in order that he may, if he thinks fit, appeal against the objection to the General Commissioners. ⁴If, upon receiving the objection of the Surveyor to any schedule, the General Commissioners disallow the objection, they may confirm, or alter, the assessment according to the schedule, as the case may require. ⁵If the person charged appeals, the assessment cannot be confirmed, or altered, until the appeal is heard. ⁶If, upon hearing the appeal, the General

¹ 5 & 6 Vict. c. 35, s. 128.

² 5 & 6 Vict. c. 35, s. 120.

³ 5 & 6 Vict. c. 35, s. 121.

⁴ 5 & 6 Vict. c. 35, s. 122.

⁵ 5 & 6 Vict. c. 35, s. 121.

⁶ 5 & 6 Vict. c. 35, s. 122.

Chap. III. Commissioners are satisfied with the schedule, and have received no information of its insufficiency, they may also confirm, or alter, the assessment according to the schedule, as the case may require. But, if the General Commissioners think that the schedule should be verified, they direct the Assessor to give notice to the person charged to appear before them; and he must appear accordingly and verify the contents of his schedule upon oath, and sign the same; and after such verification the General Commissioners make a final assessment.
¹The General Commissioners have the same powers of putting questions in writing, and calling upon the person questioned to verify his answers upon oath, with reference to any schedule, as we have ²before described them to have with reference to an assessment.
³In any case in which any person required to return a schedule neglects to do so, and in any case in which a schedule has been objected to by the Surveyor, and the objection has not been appealed against in proper time, and in any case in which a person called upon to verify his schedule or his answers, or examination in writing, neglects to do so, as well as in any case in which the General Commissioners agree to allow the objections made by any Surveyor, the General Commissioners, according to the best of their judgment, settle and

¹ 5 & 6 Vict. c. 35, ss. 123, 124.

² *Ante*, pp. 238—240.

³ 5 & 6 Vict. c. 35, s. 126.

ascertain in what sums such person ought to be charged, and make a final assessment. ¹ Any person, however, who has delivered a schedule, may, if he discovers any omission or wrong statement therein, deliver an additional schedule rectifying such omission or wrong statement; and upon doing so is exempt from liability to any proceeding for such omission or wrong statement; and, if he has neglected to deliver a schedule within the time limited, he may deliver a schedule at any time before any proceeding has been taken to recover the penalty; and upon doing so is not liable to any proceeding for recovering the penalty. Even after proceedings have been commenced for recovering the penalty, the General Commissioners may, upon proof that no fraud or evasion was intended, stay the proceedings upon such terms as they think fit; or, if any proceeding has been commenced in any Court, the Judge of the Court may, upon a certificate from the General Commissioners that in their judgment no fraud or evasion was intended, stay the proceedings on such terms as he may think fit. And if an imperfect schedule has been delivered, if the person delivering the same gives a sufficient reason why a perfect schedule cannot be delivered, the Commissioners may give further time for delivery of the schedule. These provisions apply equally to statements as to schedules, and to the Commissioners to whom

¹ 5 & 6 Vict. c. 35, s. 129.

Chap. III. statements are to be delivered, as to the General Commissioners.

Assessment by Special Commissioners on Request of Person chargeable.—¹ Any person chargeable, who does not claim the exemption granted to persons whose annual incomes are less than 150*l.*, may require that all proceedings in order to an assessment upon him be taken before the ² Special Commissioners instead of the Additional Commissioners or General Commissioners. He must deliver a notice of his request, with the list, declaration, and statement of his profits and gains, to the Assessor of the parish, to be by him transmitted to the Surveyor of the district in which he is chargeable. The Surveyor thereupon examines the list and statement, and assesses the duty according to his judgment, and delivers a certificate of the assessment, with the list, declaration, and assessment, to the Special Commissioners, who examine the same, and make, or sign and allow, such an assessment as appears to them just and proper. The person charged, and also the Surveyor, ³ has a right of appeal against the assessment so made. ⁴ The

¹ 5 & 6 Vict. c. 35, s. 131. As to the exemption, see *ante*, p. 164.

² That is, the Board, and such persons as the Treasury appoints. *Ante*, pp. 5, 6.

³ As to the appeal, see *post*, pp. 302, 303.

⁴ 5 & 6 Vict. c. 35, s. 132.

Special Commissioners, when authorized to make, ^{Chap. III.} sign, or allow, any assessment, have all the powers which may be exercised by the General Commissioners, or by the Additional Commissioners in relation thereto.

Where the Assessment is made by the Special Commissioners.

Special Commissioners, when authorized to make assessment, have all the powers of General Commissioners.

Procedure—Powers of Special Commissioners, &c.—

¹In every case in which an assessment is made by the Special Commissioners, they notify the amount of the assessment to the person charged. In the case of interest, dividends, or other annual payments, payable by ²foreign or colonial companies, and of ³all dividends, interest, and other annual payments, where the right or title of the person to whom the same is payable is shown by the registration or entry of the name of such person in any book or list ordinarily kept in the United Kingdom, which, ⁴as we have said, are assessed by the Special Commissioners, ⁵all persons entrusted with the payment of such annuities, &c., or acting therein as agents, or in any other character, or having the custody of such book, or making such list, must without further

¹ 5 & 6 Vict. c. 35, s. 131.

² 16 & 17 Vict. c. 34, s. 10; 24 & 25 Vict. c. 91, s. 36.

³ 29 & 30 Vict. c. 36, s. 9.

⁴ *Ante*, p. 228.

⁵ 5 & 6 Vict. c. 80, s. 2. As to the extent of the phrase "person entrusted with payment," see *ante*, p. 219, note ³.

Chap. III. notice deliver to the Board an account in writing containing a description of the annuities, &c., intrusted to them for payment, and other prescribed particulars, within one month after the same has been required by public notice in the "London Gazette;" and must also, on demand by the inspector authorized for that purpose by the Board, deliver to him for the use of the Special Commissioners true accounts of the annuities, &c. payable by them. The Special Commissioners make the assessment on such annuities, &c., and give notice of the amounts of the assessments made by them to the respective persons intrusted with the payment of the annuities, &c. The penalty which any person intrusted with the payment of the annuities, &c., who neglects, or refuses, to deliver an account as aforesaid, incurs, is 100*l.* over and above the duty. As¹ we have said, the Special Commissioners have, in all cases in which they are authorized to act, the same powers as the Additional or the General Commissioners.

*Assessments entered in Books, &c.—²*The General Commissioners, and the Special Commissioners when authorized to act, enter the several amounts of the sums assessed by them in their Books of Assessment; and from time to time make out and transmit to the Board accounts of the amount of duty assessed by them containing prescribed particulars.

¹ *Ante*, p. 245.

² 5 & 6 Vict. c. 35, s. 136; 12 & 13 Vict. c. 1, s. 17.

SUB-SECTION 2.—COLLECTION.¹

When Assessment made by General Commissioners.—

²All assessments made by the General Commissioners are entered in books with the names, and descriptions, and places of abode, of the persons, corporations, or societies, charged thereunder ; and the entries are either numbered progressively or distinguished by letters as the Commissioners think proper. If any person charged by any such assessment declares his intention of paying the duty to the proper officer for receipt within the time limited for payment, and the Commissioners are satisfied with such declaration, they deliver to such person, or to anyone attending on his behalf, a certificate under the hands of two of the Commissioners, specifying the amount of the sums to be paid within one year upon such assessment. The certificate is numbered or lettered with the same number or letter as the entry in the book of the Commissioners to which such certificate relates, without naming, or otherwise describing, the person charged ; and the certificate is a sufficient authority to the receiving officer to receive from time to time from any person producing the certificate the amount of the sums contained therein ; and on payment of the sums contained in any such certificate the receiving officer gives a certificate for

¹ See note, p. 196, *ante*.

² 5 & 6 Vict. c. 35, s. 137.

Chap. III. the same, acknowledging the payment. ¹ If no declaration is made by the person charged, or if the Commissioners are not satisfied with the declaration, they deliver a duplicate of the assessment made upon such person to the Collector, with their warrant for collecting the same. If after a declaration as aforesaid is delivered, the duty is not paid in accordance therewith, the name of the defaulter, and the amount of the duty assessed upon him, is inserted in the duplicate of the Collector, and the warrant for collecting the same is then of like force as if the name and sum had been inserted therein at the time of issuing the warrant. ² The General Commissioners are empowered to deliver to the receiving officers duplicates of the assessments made by them, containing the sums assessed upon every person to whom a certificate has been delivered by letter or number, without naming such persons, with their warrants for receiving the duties when the same become payable. ³ The duty payable on every such assessment must be paid by the person charged to the receiving officer before the day appointed for payment; and the certificate required to be given on payment must be delivered to the General Commissioners, or to one or more of them, or to their clerk at his office, before the time when the duty is payable, and their, or his, receipt taken for

¹ 5 & 6 Vict. c. 35, s. 138.

² 5 & 6 Vict. c. 35, s. 139.

³ 5 & 6 Vict. c. 35, s. 140.

the same. If the duty is not paid, or the certificate delivered as aforesaid, the General Commissioners deliver a duplicate of all sums assessed on the defaulter, together with their warrant, to such Collector as they may appoint to levy the sum in arrear and unpaid. The duties mentioned in the warrants delivered to the receiving officers are collected and levied as the duties under any other of the schedules are collected and levied. ¹ The duty may, if the person chargeable so pleases, be paid in advance, and in that case an allowance by way of discount of 2*l.* 10*s.* per cent. per annum will be made.

Deduction of Duty from Interest, &c.—² Every person liable to the payment of any yearly interest of money, or any annuity, or annual payment, as a personal debt, or obligation by virtue of any contract, may, on making such payment, deduct the amount of the rate of duty, which at the time when such payment becomes due is payable. ³ If the rate of income tax has varied during the period through which such payment has accrued, a proportionate amount of the several rates of income tax chargeable may be deducted. ⁴ A refusal to allow any

¹ 5 & 6 Vict. c. 35, s. 141; 52 & 53 Vict. c. 42, s. 10.

² 5 & 6 Vict. c. 35, s. 102; 16 & 17 Vict. c. 34, s. 40. As to the meaning of "yearly interest," see *ante*, p. 198, note⁵.

³ 27 & 28 Vict. c. 18, s. 15.

⁴ 5 & 6 Vict. c. 35, s. 103; 16 & 17 Vict. c. 34, s. 40. Where interest, &c. has been paid out of profits chargeable under Schedule D. without deduction, the Commissioners

Chap. III. such deduction renders the person refusing liable in some cases to forfeit treble the value of the debt, and in others to a penalty of fifty pounds.

¹ And upon payment of any interest of money, or annuities, charged with income tax under Schedule D., and not payable, or not wholly payable, out of profits and gains brought into charge to such tax, the person by or through whom such interest, or annuities, shall be paid is to deduct thereout the rate of income tax in force at the time of such payment, and is forthwith to render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest, or annuities, as is not paid out of profits or gains brought into charge, as the case may be ; and such amount is to be a debt from such person to Her Majesty, and recoverable as such accordingly, and ² the provision in sect. 8 of 13 & 14 Vict. c. 97

may grant a certificate which will entitle the person charged to make the deduction. See *post*, p. 292.

¹ Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 24 (3). This enactment was suggested by the case of *Gresham Life Assurance Society v. Styles* (*ante*, pp. 143—145), and “for the first time made it compulsory upon the persons liable in payment to retain income tax, upon their making payment out of the capital which they employ in trade, of any interest of money or annuities charged with the tax under Schedule D., and not payable or wholly payable out of profits brought into charge to such tax.” Lord Halsbury, L. C., in that case.

² This section makes money received for duty a debt to the Crown from the person receiving it, and provides for its recovery.



in relation to money in the hands of any person for Chap. III.
legacy duty applies to money deducted by any person
in respect of income tax.

Under the above enactment a Railway Company which has made no profits during the period its works were under construction, but has during that period paid interest upon its share and debenture capital out of a fund provided for the purpose, is bound to deduct income tax from the payments of interest so made, and the income tax so deducted becomes a debt to the Crown. *Lord Advocate v. Forth Bridge Railway Co.*, 28 Sco. L. R. 576.

A debtor assigned to trustees a fund in Court, *Case of Crane v. Kilpin.* upon trust to pay a fixed sum yearly to his creditors in payment of their debts *pro rata* with interest until payment. It was held that the trustees were entitled to deduct income tax on the payments made by them in respect of interest.

Crane v. Kilpin, L. R., 6 Eq. 334.

Where the Assessment is made by the Special Commissioners.—¹ All persons entrusted with payment of annuities, dividends, or shares of annuities, or interest, payable out of the revenues of any foreign state, or by foreign or colonial companies, and on all

¹ 5 & 6 Vict. c. 35, ss. 29, 96; 16 & 17 Vict. c. 34, s. 10; 24 & 25 Vict. c. 91, s. 36; 29 & 30 Vict. c. 36, s. 9. The phrase "person entrusted with payment," has the same extent of meaning in the first three sections quoted, as to which see *ante*, p. 219, note ³.

Chap. III. dividends, &c., the right to which of the person to whom the same may be payable is shown by the registration or entry of the name of such person in any book or list ordinarily kept in the United Kingdom, and on all annuities, pensions, or other annual sums payable out of the funds of any institution in India, entrusted to any person in the United Kingdom for payment to any persons resident in the United Kingdom, on receiving the ¹ notice of the amount of the assessments thereon given by the Special Commissioners, must pay the duty on such annuities, &c., on behalf of the persons, corporations, and companies, entitled to the same out of the moneys in their hands. The persons entrusted with payment of the annuities, &c., must from time to time pay the duties assessed thereon into the Bank of England to the account kept there with the Receiver-General of Inland Revenue. ²The Special Commissioners, when authorized to act in relation to the assessment, have all the powers of the General, or Additional, Commissioners in relation to the collection of the duties.

SECTION V.

SCHEDULE E.—ASSESSMENT AND COLLECTION.³

Who are Commissioners for assessing the Duties under Schedule E.—⁴The Commissioners authorized to

¹ See *ante*, p. 221.

² 5 & 6 Vict. c. 35, s. 132.

³ See note ¹, p. 196, *ante*.

⁴ 5 & 6 Vict. c. 35, ss. 30, 31, 34.

assess the duties chargeable under Schedule E. upon ^{Chap. III.} the salaries, &c., attached to the offices which ¹we have mentioned as included in this schedule, are the ²respective Commissioners for all the offices in each department, and the assessment is made in the respective places in which such Commissioners respectively execute their offices. In all cases of duty chargeable under this schedule in which the Commissioners just referred to have no jurisdiction, ³the assessment is made by the General Commissioners, ⁴except in the case of offices, and employments of

¹ See *ante*, pp. 166, 167.

² For an enumeration of these Commissioners, see *ante*, pp. 7—10.

³ 5 & 6 Vict. c. 35, s. 22. The General Commissioners are Commissioners for assessing the duty upon all offices, and employments of profit (not being public offices, or employments of profit, under her Majesty), in any county, riding, shire, city, liberty, town, or place, whether in the appointment of the lieutenant, custos rotulorum, justices or magistrates, commissioners for aids or taxes, or sheriff, of such county, &c., or of any trustees, or guardians of any trust, or fund, in such county, &c., and for all parochial offices in such county, &c. (except corporate offices in cities, corporate towns, boroughs, or places, or offices in cinque ports, in assessing the duties on which the mayor, aldermen, and common council, or the principal officers or members of the city, &c., or any three or more of them, not exceeding seven, act as Commissioners: *ante*, pp. 9, 10). 5 & 6 Vict. c. 35, s. 32. This section was repealed by sect. 9 of the Customs and Inland Revenue Act, 1876 (39 & 40 Vict. c. 16), but was revived, with respect to the duties chargeable under Schedule E., by sect. 7 of the Customs, Inland Revenue, and Savings Bank Act, 1877 (40 & 41 Vict. c. 13).

⁴ 23 & 24 Vict. c. 14, s. 6. See *post*, pp. 259, 260.

Chap. III. profit held in or under any railway company, the assessment upon which is made by the Special Commissioners. ¹ Every person to be assessed for his office, or employment, is deemed to have exercised the same at the head office of the department under which such office or employment is held; and every office is deemed to belong to, and to be assessed by, or under, the principal officers of that department by, or under, whom the appointment to such office is made; but when such appointment is made by any inferior officer, the office is assessed by the same Commissioners as assess such inferior officer. But when any such appointment is made under the Great, or Privy, Seal, or under the Royal Sign Manual, or under the hands or seals of the Treasury, and the office is not exercised in the department of the Treasury, the officer holding the same is assessed in the department in which he exercises his office. But this is without prejudice to the right of the Commissioners of the district to assess the profits of offices within their respective jurisdictions, although such offices are not held under their appointment. ² In all cases in which any annuity, or pension, is payable out of any particular branch of the public revenue, and at the office of that branch of revenue, the Commissioners acting for that department have authority to assess and levy the duty upon same as a salary, or wages, payable thereout.

¹ 5 & 6 Vict. c. 35, s. 147.

² 5 & 6 Vict. c. 35, s. 146, r. 10.

Assessment—Period for which made.—¹The assessment in respect of annuities, pensions, or stipends, mentioned in Schedule E. is in force for one whole year, unless the same ceases, or expires, within the year by lapse, death, or otherwise; from which period the assessment is discharged. ²The assessments are in force for one year, commencing, and payable, at the like periods as the assessments in parishes are made payable.

Qualification of Commissioners for Duties on Offices, &c.—³No qualification is required of any of the officers or persons who are Commissioners for the duties on offices, or employments of profit, or on pensions, stipends, or annuities, chargeable under Schedule E., and who act as such Commissioners by virtue of their several offices, other than such offices respectively.

Proceedings in order to Assessment.—⁴The Commissioners meet as soon after their appointment as they conveniently can in some convenient place, and, after qualifying themselves by taking ⁵the prescribed oaths, they may elect a Clerk, and Assessors: and, ⁶in

¹ 5 & 6 Vict. c. 35, s. 146, r. 1.

² 5 & 6 Vict. c. 35, s. 154.

³ 5 & 6 Vict. c. 35, s. 156.

⁴ 5 & 6 Vict. c. 35, s. 150.

⁵ *Ante*, p. 10.

⁶ As to the cases in which the duties may be stopped or detained, see *post*, pp. 257, 258.

Chap. III cases in which the duties cannot be stopped and detained at the departments of office of the Commissioners respectively, or for which they respectively act, they may also elect separate Assessors from the officers in their respective departments. Such Assessors, within a time fixed by the Commissioners, deliver to them their certificates of assessment in writing under their hands, and verified upon oath, of the full and just annual value of all offices, and employments of profit, chargeable with duty, and of all pensions, and stipends, and of the names and surnames of the several officers, and persons, entitled to pensions, or stipends, and of the duties they ought to pay. The Assessors¹ assess themselves as well as all other persons whom they ought to assess; and may have free access to all documents and papers whatever in their respective offices touching the salaries, &c. of any person chargeable belonging to their respective offices. They may also, whenever necessary, require returns from the persons chargeable, in order that they may make a true assessment; but,² unless such a return is required by the Assessors, no person chargeable is to be liable to a penalty for not returning a statement of the profits arising from his office, pension, or stipend, in pursuance of any general notice.³ Lists or accounts of all salaries, fees, wages, perquisites, and profits, pensions, and stipends, must

¹ 5 & 6 Vict. c. 35, s. 150.

² 5 & 6 Vict. c. 35, s. 151.

³ 5 & 6 Vict. c. 35, s. 154.

be delivered upon the request of the Assessors by the ^{Chap. III.} officers or their deputies, receivers, and paymasters, in every office for which Commissioners are appointed for raising the duties, to, or by, whom the same salaries are paid, or payable; as well as by any agent by whom the same are payable. The penalties for not delivering such lists or accounts upon request are the same as those exacted for not delivering the other returns required by the ¹Income Tax Act, 1842. The assessments made by the Assessors must be brought by them to the Commissioners appointed in regard of the same, who must sign the assessments.

Stoppage of Duties.—²In all cases in which any salaries, fees, or wages, or other perquisites, or profits, or any annuities, pensions, or stipends are payable at any public office, or by any officer of her Majesty's household, or by any of her Majesty's receivers, or paymasters, or by any agents employed in that behalf, the duties payable in respect thereof are detained and stopped thereout, if not otherwise paid; and, whenever such duties are assessed by the General Commissioners in their respective districts, they must transmit an account of the amount of the duty assessed to the office where the salaries, &c., are payable, in order that the duty assessed may be there stopped or detained. ³In all cases in which the salaries, &c., of any officer chargeable do not arise out of any of

¹ 5 & 6 Vict. c. 35.

² 5 & 6 Vict. c. 35, s. 146, r. 5.

³ 5 & 6 Vict. c. 35, s. 146, r. 6.

Chap. III. the offices mentioned, but out of some other office, or employment of profit, chargeable with duty, and the salaries, &c., are payable at such office by any officer thereof, or by any receiver, or by any agent, employed in that behalf, the duties chargeable on such salaries, &c., are also stopped or detained thereout, if not otherwise paid. ¹Such portion of the duties on offices, or employments of profit, or on annuities, pensions, or stipends, charged with any sum of money payable to any other person, is deducted out of the sum payable to such other person as a like rate on such sum would amount to ; and all such persons, their agents, or receivers, must allow such deductions and payments upon receipt of the residues of such sums. ²And such portions of the duties charged on any office, or employment of profit, executed by any deputy, or clerk, or other person employed under the principal in such office, and paid by such principal out of his salary, &c., is deducted out of the salary, &c., so payable as a like rate on such salary, &c., would amount to ; and all such deputies, &c., must allow to their respective principals such deductions and payments on receipt of the residues of such salaries, &c. ³Every person refusing to allow any deduction of duty authorized to be made incurs a penalty of fifty pounds. ⁴In estimating the duty payable for any

¹ 5 & 6 Vict. c. 35, s. 146, r. 7.

² 5 & 6 Vict. c. 35, s. 146, r. 8.

³ 5 & 6 Vict. c. 35, s. 103.

⁴ 5 & 6 Vict. c. 35, s. 146, r. 9.

such office, or employment of profit, or any pension, ^{Chap. III.} annuity, or stipend, all official deductions and payments made upon receipt of the salaries, fees, wages, perquisites, and profits thereof, or in passing the accounts belonging to such office, or upon the receipt of such pension, annuity, or stipend, must be allowed, to be deducted, if a due account thereof is rendered to the Commissioners and proved to their satisfaction.

Additional Assessment.—¹ Where any person who holds, or exercises, any public office, or employment of profit, becomes entitled to any additional salary, fees, or emoluments, during any year of assessment beyond the amount for which any assessment was made upon him, or beyond the amount at which at the commencement of the year of assessment he was liable to be charged, an additional or supplemental assessment is from time to time, as often as the case requires, made upon such person for the additional salary, &c., so that he may be assessed and charged for the full amount of the whole of the salary, &c., which he receives, or becomes entitled to, during the year of assessment.

Duties in respect of Offices, &c., in or under any Railway Company.—² The Special Commissioners,

¹ 16 & 17 Vict. c. 34, s. 53.

² 23 & 24 Vict. c. 14, s. 6; 40 & 41 Vict. c. 13, s. 7. A railway company is not liable to be assessed in respect of wages paid by them to persons employed by them at weekly wages. It would seem that any such persons, if their in-

Chap. III. when they have assessed the duty payable in respect of any office, or employment of profit, in or under any railway company, notify the particulars thereof to the secretary, or other officer, of the company, and the assessment is then deemed to be an assessment upon the company, and is paid, collected, and levied accordingly. The company, or their secretary, or other officer, may deduct or retain out of the fees, emoluments, or salary of each person in their employment the duty charged in respect of his profits or gains.

When any Office, &c., is executed by Deputy.—

¹ When any office, or employment of profit, chargeable with duty is executed by deputy, and the deputy is in receipt of the profits thereof, he is answerable for, and must pay the assessment charged thereon, and may deduct the same out of the profits of such office, or employment. And where the salaries, fees, wages, emoluments, or profits of any officer, or officers, in any such office are receivable by one or more of the said officers for the use of such officer, or officers, or as a fund to be divided amongst such officers in certain proportions, the officer, or officers, receiving such salaries is, or are, answerable for the duties charged thereon, and must pay the

comes amount to 150*l.* a year, are liable to be assessed under Schedule D. *Attorney-General v. The Lancashire and Yorkshire Railway Company*, 33 L. J., Ex. 163.

¹ 5 & 6 Vict. c. 35, s. 153.

same, and deduct them out of the funds provided ^{Chap. III.} for such respective offices, or employments, before any division or apportionment thereof. In case of refusal to pay, or non-payment, the deputy, or receiver, is liable to such distress, and to all such other remedies, and penalties, respectively, as is, or are, prescribed against any person having the office or employment.

Delivery of Duplicates of Assessments to Collectors.—

¹The respective Commissioners for duties upon offices, in all cases in which Collectors are authorized to be appointed, cause like duplicates of assessment to be made, and delivered to the Collectors, with like warrants to collect the duties, as ²are given to Collectors for any parish or place; and the Collectors of the duties on offices have like authority to demand and levy the said duties as ²is given to Collectors of any parish or place. ³In all cases in which the duties on any salaries, fees, wages, perquisites or profits of any public office are detained and stopped out of the same salaries, &c., the respective Commissioners cause like duplicates to be delivered to the proper officers in the respective offices, who keep true accounts of all moneys stopped and detained, and are answerable for the same.

¹ 5 & 6 Vict. c. 35, s. 154.

² See *ante*, p. 196.

³ 5 & 6 Vict. c. 35, s. 154.

CHAPTER IV.

ALLOWANCES, ABATEMENTS, RELIEFS, AND CORRECTION
OF ERRONEOUS ASSESSMENTS.

IN the preceding portion of this book we have dealt with the authorities concerned in assessing, and collecting, the income tax, with the property, and profits, upon which the tax is charged, and with the machinery by means of which the tax is assessed, and collected. We have now to describe the methods by which persons charged obtain the allowances and abatements, which they are entitled to claim, and secure the rectification of erroneous assessments made upon them. In dealing with this subject we shall adopt the plan we have previously employed, and divide the present chapter into sections corresponding with the five Schedules under which the duties of income tax are charged.

SECTION I.—SCHEDULE A.

Allowances to Ecclesiastical Persons in respect of Tentshs, &c.—As¹ we have already seen,² allowances are made for the amount of the tenths, and first

¹ *Ante*, pp. 72, 73.

² 5 & 6 Vict. c. 35, s. 60, No. 5, rr. 1, 2, 3.

fruits, duties and fees on presentations, paid by any ecclesiastical person within the year preceding that in which the assessment is made; for procurations, and synodals, paid by ecclesiastical persons, on an average of seven years preceding that in which the assessment is made; and for repairs of collegiate churches and chapels, and chancels of churches, or of any college or hall in any of the universities of Great Britain by any ecclesiastical or collegiate body, rector, vicar, or other person, bound to repair the same, on an average of twenty-one years preceding that in which the assessment is made.

¹The allowances in respect of the charges enumerated may be made to the ecclesiastical, or collegiate, body, rector, vicar, or other person, liable to such charges respectively in one sum, either by deducting the same from the assessment made upon him (with deductions so made we have not now to deal), or by certificate.

²In case the allowance has not been made by way of deduction from the assessment, the person entitled thereto must claim the allowance at any time ³within three years after the expiration of the year of assessment, before the General Commissioners for the district in which the property charged with the payments in respect of which the allowance is made is situate. The General Commissioners, upon due proof before them that the claimant is entitled to the

Allowances may be made either by deduction from assessment,

or by certificate and order.

¹ 5 & 6 Vict. c. 35, s. 60, No. 5.

² 5 & 6 Vict. c. 35, s. 61.

³ 23 & 24 Vict. c. 14, s. 10.

Chap. IV. allowance which he claims, certify the particulars and amount of the allowance to the Special Commissioners at the ¹Chief Office of Inland Revenue in England, and the Special Commissioners then grant an order for the payment of such allowance, directed either to the Receiver-General of Inland Revenue, or to an officer for receipt, or collector, of the duties, or to a distributor, or sub-distributor, of stamps, as may be most convenient for the person entitled to the allowance, and upon the delivery of the order to the Receiver-General or other officer to whom the same is directed, he pays the amount of the allowance to the person entitled thereto, taking a receipt by indorsement upon the order.

Allowance for Diminished Value of Machinery by wear and tear.—In the case of any ²concern chargeable under Schedule A. by reference to the rules of Schedule D., ³when any machinery or plant is let for the purposes of the concern, to the person, or company, by whom the concern is carried on, upon such terms that the burden of maintaining and restoring the machinery, or plant, falls upon the lessor, he is entitled, on claim made to the General, or Special,

¹ 12 & 13 Vict. c. 1, s. 17.

² See *ante*, p. 54.

³ 41 & 42 Vict. c. 15, s. 12. We are dealing now, it will be observed, only with the claim to repayment made by the lessor of machinery, &c. As to the deduction for diminished value of machinery, &c., by wear and tear made upon assessment of any such concern as above mentioned, see *ante*, p. 60.

Commissioners in the ¹manner prescribed by sect. 61 ^{Chap. IV.} of the ²Income Tax Act, 1842, to have repaid to him such a portion of the sum which has been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as represents the income tax upon such an amount as the Commissioners think just and reasonable as representing the diminished value by reason of wear and tear of such machinery or plant during the year. But no such claim is allowed unless it is made within twelve calendar months after the expiration of the year of assessment.

*Exemption of Persons whose Income is less than 150*l.* a year from Duty, and Mode of claiming Exemption.*—³ Any person chargeable to the duties either by way of assessment or deduction, is exempt if his annual income is less than 150*l.*; and, if he has paid, or been charged with, duty, he is entitled to be repaid the amount of all payments, and deductions, made by, or against, him on account of duty, except, of course, such sums paid, or charged, on account of duty as he is entitled to charge against any other person, or to deduct out of any payment to which he may be, or become, liable. The modes of proceeding to claim the exemption differ according as the

¹ See *ante*, p. 263.

² 5 & 6 Vict. c. 35.

³ 5 & 6 Vict. c. 35, ss. 163, 164; and 39 & 40 Vict. c. 16, s. 8.

Chap. IV. claim is made before assessment, or after the duty has been charged by way of deduction, and are as follows:—

1. Mode of proceeding in case claim is made before assessment.

1. ¹ If the claim is made before assessment, the claimant within the time limited for delivering the lists, declarations, and statements, required from him, or within such further time as the Commissioners for special cause assigned allow, must deliver to the Assessor of the parish or place in which he resides, a notice of his claim to exemption, with a declaration and statement ² in the prescribed form, signed by him, setting forth all the particular sources from which his income arises, and the amount of that part of his income which arises from each source specified, and every sum of annual interest, or other annual payment, reserved, or charged thereon, by which the income is diminished, and also every sum which the claimant has charged, or is entitled to charge, against any other person, for, or on account of, the duty, or which he is entitled to deduct or retain from or out of any payment to which he is, or may become, liable. ³ The claim must be made to the Commissioners of the district in which the claimant resides, whether he is personally

¹ 5 & 6 Vict. c. 35, s. 164.

² The Board have a general authority to prescribe, supply, and approve forms. 43 & 44 Vict. c. 19, s. 15.

³ 5 & 6 Vict. c. 35, s. 169.

charged in such district or not. ¹ The claim may be made by any guardian, trustee, attorney, agent, or factor, acting for the claimant, in any case in which satisfactory proof is afforded that the claimant is unable to attend in person, as well as in cases in which such guardian, &c., is authorized to act for another for the purpose of being assessed on his account in the first instance. ² The Surveyor is at liberty to peruse and examine, and to take copies of, or extracts from, the declaration and statement delivered by the claimant, or on his behalf. The notice, declaration, and statement, when received by the Assessor, is transmitted by him to the Commissioners, and if the Surveyor does not object to the declaration within forty days, the Commissioners may allow the claim to exemption, and discharge the assessment upon the claimant, either in his own name, or in the name of his lessee or tenant. If it appears that any property, or profits, of the claimant is, or are, assessed, or liable to be assessed, in any other district, the Commissioners certify to the Board the allowance of the claim to exemption, and the Board direct the assessment made upon the property, or profits, of the claimant in such other district to be discharged, either in his own

¹ 5 & 6 Vict. c. 35, s. 170.

² 5 & 6 Vict. c. 35, s. 164.

Chap. IV.

name, or in the name of his lessee or tenant. If the Surveyor objects to the claim to exemption in writing, and suggests that he has reason to believe that the income of the claimant, or any other particulars required to be set forth in the declaration or statement, is, or are, not truly set forth in any specified particular, the merits of the claim to exemption are heard and determined on appeal before the General Commissioners, as other appeals are heard and determined before them; and if the claim is allowed on appeal, the General Commissioners issue all necessary certificates consequent thereon.

2. Mode of proceeding in case claim is made after the duty has been charged.

2. If the claim to exemption is made after the duty has been charged by assessment or by way of deduction,¹ then, if the claim has been allowed by the General Commissioners, and it is proved to their satisfaction that the claimant has been charged to, and has paid, any duty by way of deduction from any rent, annuity, interest, or other annual payment, to which he is entitled, and from which deduction is authorized, the General Commissioners certify to the Special Commissioners at the head office of Inland Revenue in England the amount, and the particulars, or nature, of the payment out of which, and the name, and place of abode, of the person by whom, such deduction has been made,

¹ 5 & 6 Vict. c. 35, s. 165; 12 & 13 Vict. c. 1, s. 17.

and other prescribed particulars ; and thereupon ^{Chap. IV.} the Special Commissioners issue to the claimant an order directed to the Receiver-General of Inland Revenue, or to an officer for receipt, or Collector, of the duties, or to a distributor, or sub-distributor, of stamps, for repayment of the duty certified to have been paid by him ; and such duty is accordingly repaid in the same way as the allowances mentioned ¹ before. ²But every claim for repayment of duty must be made within three years after the end of the year of assessment to which the claim relates.

³The annual value of lands, &c., belonging to, or <sup>How
occupied by, any person claiming exemption on the
annual
value of
land, &c.
estimated
for the
purpose of
claiming
deduction
on account
of yearly
income
being less
than 150*l.*</sup> ground of his yearly income being less than 150*l.* is estimated, for the purpose of ascertaining his title to such exemption, according to the ⁴rules and directions contained in the Schedules A. and B. respectively. The income arising from the occupation by such claimant of lands, &c., is deemed, for the purpose aforesaid, to be equal in England to one-half of the full annual value thereof, estimated according to such rules and directions. Where the claimant is proprietor as well as occupier, the amount deemed to be the income arising from the occupation as aforesaid, is added to the full annual value of the lands, &c.,

¹ See *ante*, p. 264.

² 23 & 24 Vict. c. 14, s. 10.

³ 5 & 6 Vict. c. 35, s. 167.

⁴ See *ante*, pp. 48 *et seq.*

Chap. IV. and the aggregate amount is deemed, for the purpose aforesaid, to be the income of the claimant arising from the lands, &c., of which he is proprietor and occupier. The income arising from any lease of, or composition for, tithes is deemed, for the purpose aforesaid, to be equal to one-fourth of the full annual value of such tithes estimated as aforesaid.

Coparceners,
joint
tenants,
and te-
nants in
common
and part-
ners may
claim
severally.

¹Coparceners, joint tenants, or tenants in common, of the profits of any property, and joint tenants or tenants in partnership of lands or tenements, being in the actual and joint occupation thereof in partnership, and entitled to the profits thereof in shares, and personally labouring therein, or managing the same, may severally claim the exemption according to their respective shares and interests; and the claims, when duly proved to the satisfaction of the Commissioners to whom the same are made, may be proceeded upon as in the case of several interests. But the profits so arising are not in any case charged separately to the duty, in respect of the occupation of lands, where lands are let, or underlet, without relinquishment of the possession by the lessor, or where the lessee or tenant is not exclusively in the possession or occupation of the lands so let. ²All claims for repayment of duty must be made within three years next after the end of the year of assessment to which the claim relates.

¹ 5 & 6 Vict. c. 35, s. 168.

² 23 & 24 Vict. c. 14, s. 10.

*Abatement of Duty allowed to Persons whose Income Chap. IV.
is under 400*l.* a year.—*¹ Any person chargeable to the duties, either by way of assessment or deduction, if his annual income exceeds 150*l.* a year, but is less than 400*l.* a year, is entitled, if he has paid, or been charged with, duty, to be relieved from so much of the duties assessed upon, or paid by, him as an assessment, or charge, of the said duties upon 120*l.* of his income amounts to. The relief, if not given by reduction or abatement of the assessment, upon the person entitled to relief, is given by the repayment to him of so much of the excess as he has paid, in the same way as repayment is made to a person entitled to exemption on account of his annual income being less than 150*l.* a year.

*Abatement of Duty in respect of Premiums paid on Life Assurances and Purchases of Deferred Annuities, and Mode of claiming same.—*Any person who has been assessed under Schedule A., and has paid the duty assessed upon him, or has been charged with it by way of deduction, may, if he has effected a life assurance, or purchased a deferred annuity, as ²before explained, make a claim to the Commissioners for Special Purposes for repayment of such a proportion of the duty paid by him as the amount of the annual premium paid by him bears to the whole amount of

¹ 39 & 40 Vict. c. 16, s. 8.

² *Ante*, pp. 87—89.

Chap. IV. his profits and gains on which he is chargeable under all, or any of, the schedules, and, on proof of the facts to the satisfaction of the Commissioners, is entitled to have such repayment made.

Allowances in respect of Payments out of Tithe Rent-Charge.—¹ As we have already explained, allowances are made for parochial rates, taxes, and assessments, charged upon, or in respect of, any rent-charge confirmed under the Act passed for the commutation of tithes, on the amount paid in the year in which the assessment is made. ² These allowances are not made by way of deduction from the assessments, but by certificate in ³ the manner explained with reference to allowances for tenths, &c.

Allowances in respect of Land Tax, Drainage Charges, &c.—¹ As we have already explained, allowances are made for the amount of the land tax charged on lands, &c., under the 38 Geo. III. c. 5, where the land tax has not been redeemed, and for drainage, and other, charges. These allowances seem to be made by way of deduction from the assessment; so that with regard to them no further explanation is necessary.

Allowances for Colleges and Halls in Universities, Hospitals, &c.—⁴ As we have already explained,

¹ *Ante*, p. 73.

² 5 & 6 Vict. c. 35, s. 60, No. 5, and s. 61.

³ *Ante*, pp. 262—264.

⁴ *Ante*, pp. 75, 76.

allowances are made for the duties charged on any college or hall in any of the Universities of Great Britain in respect of public buildings and offices belonging to such college or hall in certain cases; and on any hospital, public school, or almshouse, in respect of the public buildings, &c., belonging to such hospital, public school, or almshouse, in certain cases.¹ These allowances are directed to be made by the General Commissioners in their respective districts.

Allowances for Rents of Lands, &c., belonging to Hospitals, &c.—² As we have already explained, allowances are made for the duties charged on the rents and profits of lands, &c., belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes.³ These allowances are made by the Special Commissioners, on proof before them of the due application of such rents and profits to charitable purposes only, and in so far as the same are applied to charitable purposes only. The claim may be made, and proved, by any steward, agent, or factor, acting for such hospital, school, almshouse, or trust for charitable purposes, by affidavit taken before any Commissioner in the district in which the claimant resides. The affidavit must state the amount of the duties chargeable, and

¹ 5 & 6 Vict. c. 35, s. 61, No. 6.

² *Ante*, p. 82.

³ 5 & 6 Vict. c. 35, s. 61, No. 6, and s. 62.

Chap. IV. the application of the rents and profits on which the duties are charged. The Special Commissioners give a certificate of the allowance, and an order for payment thereof in the manner ¹before explained. ²The claim must be made within three years next after the end of the year of assessment to which the claim relates. ³The claim to exemption of any trade union entitled thereto under the "Trade Union (Provident Funds) Act, 1893," must be claimed, and will be allowed, in the same manner.

Appeal against first Assessment—Notice of Day for.
—As soon as the assessments for any parish or place have been allowed and signed by the General Commissioners in the manner we have ⁴before described, ⁵they cause notice that the assessments have been signed and allowed, and of the day for hearing appeals from the assessments, to be given, either by delivering to the Assessor of such parish, &c., a copy of the assessments, for the inspection of the persons charged thereby, and a public notice of the day of appeal to be affixed on, or near to, the church door, or on any other public place in the parish; or by delivering to each person charged the amount of his assessment with a note of the day of appeal. The notices must be given at least fourteen days before

¹ *Ante*, p. 264.

² 23 & 24 Vict. c. 14. s. 10.

³ 56 Vict. c. 2, s. 2. See *ante*, p. 86.

⁴ *Ante*, pp. 192, 193.

⁵ 5 & 6 Vict. c. 35, s. 80; 43 & 44 Vict. c. 19, s. 57.

the day fixed for appealing. ¹The Clerk to the Commissioners informs the Surveyor of the day fixed for appealing. Any person aggrieved by an assessment upon him included in any first, or additional first, assessment may give ten days' notice of objection in writing to the Surveyor within the time limited for hearing appeals, and, upon giving such notice, he becomes entitled to appeal to the General Commissioners against the assessment within twenty-one days after the day on which he received notice of the assessment. The General Commissioners cause notice of the day of appeal to be given to every appellant. The Commissioners are bound to meet from time to time, with or without adjournment, for the purpose of hearing appeals, until all appeals have been determined. Except in cases in which they are ²specially authorized to rectify assessments otherwise, no assessment delivered to the General Commissioners may be altered by them before the time for hearing and determining appeals, and then only in cases of charges appealed against, and upon hearing the appeal on a day duly appointed. Any person altering any assessment wrongfully after it has been allowed becomes liable to a penalty of 50*l.*

Proceedings on Appeal.—³The appellant must appear before the General Commissioners on the day

¹ 43 & 44 Vict. c. 19, s. 57.

² *Ante*, pp. 191, 192.

³ 43 & 44 Vict. c. 19, s. 57.

Chap. IV. appointed, in person ; no barrister, solicitor, or person practising the law, being allowed to plead for him. However, in cases in which persons are chargeable in respect of property or profits not their own, they may of course appeal, and appear upon the appeal, as if the assessment had been made in respect of property or profits to which they were beneficially entitled. ¹No abatement, or reduction, in the charge made upon any assessment, or surcharge, may be made by the General Commissioners, upon the hearing of any appeal, unless the appellant proves to them by evidence given by him upon oath, or affirmation, or by other lawful evidence produced by him, that he is overcharged in the assessment, or surcharge, against which he appeals. The Surveyor may attend the hearing of the appeal. He may be present during the whole time occupied by the Commissioners in hearing and in determining the appeal ; and he may give his reasons in support of the assessment, or surcharge, appealed against, and produce any lawful evidence in support of such assessment, or surcharge.

²If upon the appeal any dispute arises about the annual value of any lands, &c., ³situate elsewhere than in the Metropolis, and the General Commissioners

¹ 43 & 44 Vict. c. 19, s. 57.

² 5 & 6 Vict. c. 35, s. 81.

³ 32 & 33 Vict. c. 67, s. 77. In the "Metropolis" the Valuation List is conclusive as to "annual value," *ante*, p. 187.

think it necessary, or ¹the appellant requires them, Chap. IV. to have a valuation of such lands, &c., made by a skilled person, they may direct the appellant to have a valuation made by any person they may name; and the costs of the valuation abide the final determination of the Commissioners, and are in their discretion. ²The Commissioners have power to rectify the assessment appealed against, not only by reducing it in case the appellant proves that he has been overcharged, but also by increasing it in case it is proved that he has not been sufficiently charged. ³When the General Commissioners have determined the appeal, their determination is final, unless a case for the opinion of the High Court has been required in the way we shall ⁴presently describe; and is then capable of alteration only by order of the High Court; and ⁵precludes the Surveyor from afterwards making a further charge for the same year on the person whose case is determined by the appeal, in respect of the property or profits included in the assessment appealed against and determined. The appeal is made, as we have said, to the General Commissioners of the district within which the assessment was made; but ⁶if the person assessed has

¹ 16 & 17 Vict. c. 34, s. 47.

² 5 & 6 Vict. c. 35, ss. 81, 82; 43 & 44 Vict. c. 19, s. 57.

³ 43 & 44 Vict. c. 19, s. 57.

⁴ *Post*, pp. 280—282.

⁵ 43 & 44 Vict. c. 19, s. 58.

⁶ 16 & 17 Vict. c. 34, s. 55.

Chap. IV. moved out of such district without appealing, the Board may, if they think fit, upon his application, authorize the Commissioners of the district to which he has removed to hear and determine his appeal, as if it had been prosecuted before the General Commissioners for the district in which he was assessed.

Appeal for Apportionment in Case of Divided Occupation.—¹ If after assessment made, the land, &c., which is the subject of it has been divided into two or more distinct occupations, any of the occupiers may appeal to the General Commissioners for the district to settle and adjust what proportion of the duty charged shall be paid by each occupier. The General Commissioners thereupon make an apportionment of the duty, and the apportioned duty is collected and levied in like manner as the duty charged by an original assessment.

Relief to Owners who are also Occupiers for Purposes of Husbandry when Profits fall short of Assessment.—We have ²already stated the relief afforded to owners who are also occupiers, and also to occupiers, of land for the purposes of husbandry only, in case of the profits and gains arising from the occupation of the lands during the year falling short of the sum on which the assessment was made. ³The appeal is

¹ 23 & 24 Vict. c. 14, s. 4.

² *Ante*, pp. 87, 95.

³ 14 & 15 Vict. c. 12, s. 3, which fixes the procedure. The

made to the Commissioners by whom the assessment Chap. IV.
— was made within three calendar months after the expiration of the year of assessment. Notice in writing of the appeal must be given to the Surveyor of the district. If the abatement is allowed, and the whole sum assessed has been paid, the amount of the sum overpaid is certified and repaid, in the same way as an ¹overpayment of duty under Schedule D. is certified and repaid.

Relief for Losses caused by Flood or Tempest.—
² Whenever loss is sustained by any flood or tempest on the growing crops, or on the stock, on lands let to a tenant at a reserved rent without fine, or lands so let are by flood, or tempest, rendered incapable of cultivation for any year, and the owner has in consideration of the loss agreed to make an abatement in the rent paid by the tenant for any year, the General Commissioners may, upon proof of the facts by oath, make an abatement in the assessment made in respect of the property in such lands for the same year for

abatement allowed was extended to all occupiers of land for the purposes of husbandry, not being also the owners thereof, and to all owners of land being also the occupiers thereof, and occupying the same for the purposes of husbandry, and obtaining their livelihood principally by husbandry, by 16 & 17 Vict. c. 34, s. 46; and to all owners of land occupying the same for the purposes of husbandry, by 43 & 44 Vict. c. 20, s. 52.

¹ *Post*, pp. 303 *et seq.*

² 5 & 6 Vict. c. 35, s. 83.

Chap. IV. which an abatement has been made in the rent; and may also make an abatement in the assessment made in respect of the occupations of the lands for the same year. ¹If, in such a case, the owner is an infant, idiot, lunatic, or under other disability, and incapable of consenting to any abatement in the rent, the abatement may nevertheless be made in the assessment made in respect of the occupation. ²And if in such a case, the owner of the lands is also the occupier, the abatement may still be made in the several assessments in respect of the property in, and occupation of, the lands. ³The penalty for making a false or fraudulent claim for abatement is the forfeiture of 100 l .

Case for Opinion of the High Court.—⁴When the General Commissioners have determined any appeal, either the appellant or the Surveyor may, if he is dissatisfied with the decision as being ⁵erroneous in point of law, declare his dissatisfaction to the Commissioners who heard the appeal, immediately after their decision is announced; and having done so may, within twenty-one days after the determination, address a notice in writing to the Clerk of the Commissioners

¹ 5 & 6 Vict. c. 35, s. 84.

² 5 & 6 Vict. c. 35, s. 85.

³ 5 & 6 Vict. c. 35, s. 86.

⁴ 43 & 44 Vict. c. 19, s. 59.

⁵ There is no appeal on a question of fact from the decision of the Commissioners.

requiring the Commissioners to state and sign a case Chap. IV. for the ¹opinion of the High Court. He must, however, pay a fee of twenty shillings to the Clerk before he is entitled to have the case stated. The case sets forth the facts, and the determination of the Commissioners, and is delivered to the person requiring it, who must, within seven days after receiving the case, transmit it to the High Court of Justice, and previously, or at the same time, give notice in writing of the case having been stated on his application, and a copy of the case to the other party, Surveyor or appellant, as the case may be. The High Court hear and determine the question or questions of law arising on the case transmitted, and thereupon reverse, affirm, or amend, the determination of the Commissioners; or they may remit the matter to the Commissioners with their opinion thereon. They may make such order in relation to the matter, including an order as to costs, as they see fit; and the orders so made of the High Court are ²final, and conclusive on all parties. But the High Court may, if they think fit, send the case back for amendment before delivering judgment.

¹ The Court will decline to express any opinion on points of law not raised before the Commissioners. *Bray v. Justices of Lancashire*, 22 Q. B. D. 484; 37 W. R. 392; 58 L. J., M. C. 54.

² Unless the orders are appealed. See below. The decision of the High Court upon a case stated is an "order," not a "judgment," and the appeal must be brought within twenty-one days. *Onslow v. Commissioners of Inland Revenue*, 25 Q. B. D. 465; 38 W. R. 728.

Income tax must be paid notwithstanding pendency of case.

— Chap. IV. The jurisdiction of the High Court in this respect may be exercised by a Judge sitting in Chambers, and in vacation as well as in term time. An appeal lies from the decision of the High Court, or of any Judge, to the Court of Appeal, and thence to the House of Lords. But notwithstanding that a case so stated is pending before the High Court, the income tax must be paid according to the assessment of the Commissioners by whom the case was stated; and if the amount of the assessment is afterwards altered by the High Court, the difference, if too much duty has been paid, is repaid with such interest as the High Court may allow, and if too little duty has been paid, is deemed arrears, except that it involves no penalty, and is payable and recoverable as arrears.

Appeal from Additional first Assessment.—¹ An additional first assessment allowed by the General Commissioners is subject to appeal in the same manner as a first assessment.

Appeal from Surveyor's Charges.—A certificate by the Surveyor of the particulars of any omission to assess any person liable to the duties, and of the charge which ought to be made upon such person, allowed by the General Commissioners, is ²subject to appeal in the same manner as a first assessment, except that the person charged has ³ten days after

¹ As to additional first assessments, see *ante*, p. 192.

² 43 & 44 Vict. c. 19, s. 63.

³ 43 & 44 Vict. c. 19, s. 64.

service of the notice of charge in which to deliver an ^{Chap. IV.} amended return, and ¹the delivery of such amended return, if objected to by the Surveyor, is a sufficient notice of appeal; or if the person charged makes no amended return within the ten days, he may, on the day appointed for hearing appeals, appear before the Commissioners, who must hear and determine the case, although no notice of appeal has been given. If the Commissioners have no meeting within the time limited for hearing appeals from the charges of the Surveyor, or if the Surveyor has not had notice of a meeting of the Commissioners, they must sign and allow the certificates at their first meeting held thereafter, and afterwards hear and determine all appeals.

Appeal against Surcharges.—² Appeals against surcharges are heard and determined in the same manner as appeals against first assessments. But if the person surcharged is prevented by absence, or sickness, or other sufficient cause, from appealing within twenty-one days after the date of the notice of charge, or from attending in person within such time, the Commissioners may postpone the hearing of the appeal for such time as they may think necessary. The “sufficient cause” above mentioned must be proved before the Commissioners on the oath or solemn affirmation

¹ 43 & 44 Vict. c. 19, s. 65.

² 43 & 44 Vict. c. 19, s. 67.

Chap. IV. of the person appealing, or otherwise. ¹ If the surcharge is allowed by the Commissioners, in whole or in part, the assessment on the amount of the surcharge allowed is made in treble the rate of duty; but the General Commissioners may remit, in whole or in part, the treble duty, and charge the single duty only, when they are of opinion :—

- (a) That the original return would have enabled the Surveyor to amend the assessment;
- (b) That there was no intention to defraud the revenue;
- (c) That the person charged was prevented from making an amended return by sickness, or other sufficient cause;
- (d) That there was reasonable cause of doubt or controversy on the part of the appellant on the subject-matter of appeal.

Appeal in respect of Duties charged upon Mines of Coal, &c., Quarries, may be to the Special Commissioners.

—² Any person assessed to the duty chargeable under Schedule A. in respect of any mine of coal, tin, lead, copper, mundic, iron, or any other mine, or any quarry of stone, or slate, may, if he thinks fit, appeal against such assessment to the Special Commissioners instead of to the General Commissioners, upon giving due notice of his intention to do so; and thereupon the

¹ 43 & 44 Vict. c. 19, s. 68.

² 23 & 24 Vict. c. 14, s. 7.

appeal is heard and determined by two or more of the ^{Chap. IV.} Special Commissioners, in like manner as an ¹appeal against an assessment of the duties under Schedule D.

Relief from Double Assessments.—² Whenever any person has been assessed, either on his own account or on behalf of another, and is by any error or mistake again assessed for the same cause, and on the same account, and for the same year, he may apply to the General Commissioners acting for the division or place for which he has been assessed by error or mistake, for the purpose of being relieved from such double assessment; and the General Commissioners, on due proof thereof to their satisfaction, must cause the assessment, or such part thereof as is a double charge, to be vacated. The proof may be made either by a certificate of the assessment made upon the applicant under the hands of the Commissioners by whom he has been rightly assessed for the matter or cause in question, certifying that such matter or cause is included in an assessment made by them on the applicant, on the same account and for the same year, or by other lawful evidence given of those facts upon the oath of any credible witness. ³And whenever it is proved to the satisfaction of the Board that a person has been assessed more than once to the duties for the same cause, and for the same year, they must

¹ See *post*, pp. 301 *et seq.*

² 5 & 6 Vict. c. 35, s. 171.

³ 43 & 44 Vict. c. 19, s. 60.

Chap. IV. direct the whole, or such part of such one or more of the assessments as appears to be an overcharge, to be vacated ; and thereupon the same is by such order vacated accordingly. ¹ And whenever it is proved to the satisfaction of the Board that any such double assessment has been made, and has not been vacated, and that payment has been made of both assessments, they may order the Receiver-General of Inland Revenue, or any officer for receipt, to repay the sum so erroneously and doubly assessed and paid. ² But the claim for repayment must be made within three years next after the end of the year of assessment to which the claim relates. Relief from a double assessment must be obtained in the manner indicated in the enactments above referred to, and cannot be obtained by means of a Petition of Right. *The Holborn Viaduct Land Co., Limited, v. The Queen*, (unreported).

SECTION II.—SCHEDULE B.

Mode of appealing against Assessment, and of claiming Exemptions, Allowances, and Abatements.—The mode of appealing against an assessment under Schedule B., and of claiming such of the exemptions, allowances, and abatements, mentioned under the head of Schedule A., as may be claimed upon any assessment under

¹ 5 & 6 Vict. c. 35, s. 171; 12 & 13 Vict. c. 1, s. 17.

² 5 & 6 Vict. c. 35, s. 171.

Schedule B., is similar to that adopted in the case of **Chap. IV.**
an appeal, or claim, having reference to an assessment
under Schedule A. ¹The notices of first assessments
given by the Assessors, and of the days fixed for
appeals, include assessments under Schedule B., as
well as assessments under Schedule A. ²If an
occupier of lands for purposes of husbandry only
seeks an ³adjustment of his liability with reference
to the amount of a loss sustained and to the aggregate
amount of his income for the year, he must give
a notice in writing to the Surveyor for the district,
within six months after the year of assessment, of
intention to apply to the General Commissioners for
such relief; and the Commissioners, on proof to their
satisfaction of the amount of the loss, and of payment
of income tax upon the aggregate amount of the
appellant's income, will give a certificate authorizing
repayment of so much of the sum paid for income
tax as would represent the tax upon income equal to
the amount of the loss. Such certificate may extend
to give exemption or relief by way of abatement in
accordance with the provisions of the Income Tax
Acts. Upon receipt of the certificate, the Commissioners
of Inland Revenue are to cause repayment to
be made in conformity therewith. Any fraud or
contrivance in making any such application is punish-

¹ 5 & 6 Vict. c. 35, s. 80; 43 & 44 Vict. c. 19, s. 57.

² 53 & 54 Vict. c. 8, s. 23.

³ See *ante*, p. 95.

Chap. IV. able by a penalty of 50*l.*, recoverable as a penalty imposed by virtue of the ¹Taxes Management Act, 1880.

SECTION III.—SCHEDULE C.

² *Claim of Exemption of Property of Friendly Society invested in Public Securities in Bank of England.*—³ Any such exemption may be claimed and the right thereto proved by any trustee, or treasurer, of the society, or by any member of the society, before the Special Commissioners.

⁴ *Claim of Exemption of Stock, &c., of Charitable Institutions—By whom made.*—⁵ The application of the stock, &c., to charitable purposes may be proved before the Special Commissioners by any agent, or factor, on behalf of the institution, or by any of its members, or trustees. ⁶The claim to exemption by any trade union entitled thereto under the “Trade Union (Provident Funds) Act, 1893,” is to be claimed and allowed in the same manner as is prescribed by law in the case of income applicable and applied to charitable purposes.

¹ 43 & 44 Vict. c. 19.

² As to this claim, see *ante*, p. 98.

³ 5 & 6 Vict. c. 35, s. 88, r. 1.

⁴ As to this claim, see *ante*, p. 100.

⁵ 5 & 6 Vict. c. 35, s. 88, r. 3.

⁶ 56 Vict. c. 2, s. 2; see *ante*, p. 100.

¹ *Claim of Exemption of Stock, &c., belonging to her Majesty in the Books of the Bank of England, and to any accredited Minister of any Foreign State resident in Great Britain, if standing in the name of any Trustee—By whom made.*—² The property in the stock, &c., may be proved before the Special Commissioners by the trustee in whose name it stands.

All Claims of Exemption under Rules in Schedule C.—To whom and where to be made.—³ All claims of exemption under any of the rules contained in Schedule C. must be made to the Special Commissioners at the head office of Inland Revenue in England, according to the following rules:—

1. Every claim must be in writing, in ⁴the prescribed form; and the Special Commissioners must require the same to be verified on the affidavit of every such person, as they may think necessary. The Special Commissioners have authority to require from every person whom they may think proper to examine touching such claim, true answers upon oath to all such questions as they may think material.
2. Whenever the Special Commissioners allow ^{Second rule:} any such exemption, they give an order for ^{rule:} Order for

¹ As to this claim, see *ante*, p. 101.

² 5 & 6 Vict. c. 35, s. 88, r. 5.

³ 5 & 6 Vict. c. 35, s. 98.

⁴ That is, in such form as the Board direct.

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payment
following
allowance
of ex-
emption
claimed.

payment of the sums retained for the duties on the annuities, dividends, and shares, in respect of which they have allowed such exemption, to the respective claimants, or to the attorneys, or agents, who have been authorized to receive the annuities, &c., on behalf of the claimants, and the payment is made in the same manner as ¹is provided with respect to allowances granted under No. 5 of Schedule A. ²But the claim must be made within three years next after the end of the year of assessment to which the claim relates.

*Claim of Exemption by a Person whose Yearly Income is less than 150*l.*, and of Abatement by a Person whose Yearly Income is less than 400*l.**—³This exemption, and abatement, respectively, may be claimed by persons chargeable under Schedule C.; but, inasmuch as the claim is not made under the rules contained in that schedule, it would seem that it must be made in the manner described when ⁴we were treating of similar claims made by persons chargeable under Schedule A. The same remark applies to the claim for abatement allowed on account of life assurance, and purchase of deferred annuities.

¹ See *ante*, p. 263.

² 23 & 24 Vict. c. 14, s. 10.

³ 5 & 6 Vict. c. 35, ss. 163—170; 39 & 40 Vict. c. 16, s. 8.

⁴ *Ante*, pp. 265—269, 271.

Relief against Double Assessment.—The duties under Chap. IV. Schedule C. being levied by way of deduction from the annuities, &c., upon which they are charged, it is difficult to see how a case of double assessment can arise with reference to them; but if any such case does occur,¹ the enactments² we have quoted in dealing with cases of double assessment under Schedule A., which oblige the Board, upon proof of the double assessment being made,³ within the time limited, to their satisfaction, to vacate the erroneous assessment, and to order the repayment of duty paid under it, will enable a person so charged by error under Schedule C. to obtain the relief to which he is entitled.

Case for Opinion of the High Court.—In case, too, of any appeal to the Special Commissioners, the appellant, if dissatisfied with their determination, as being erroneous in point of law,⁴ may have a case submitted for the opinion of the High Court; the procedure being similar to that⁵ we have described when dealing with cases for the opinion of the High Court having reference to the duties charged under Schedule A.⁶ An appeal lies from the decision of

¹ 5 & 6 Vict. c. 35, s. 171; 43 & 44 Vict. c. 19, s. 60.

² *Ante*, pp. 285, 286.

³ Three years. 23 & 24 Vict. c. 14, s. 10.

⁴ 43 & 44 Vict. c. 19, s. 59. See *ante*, p. 280, note⁵.

⁵ *Ante*, pp. 280, 282.

⁶ 41 & 42 Vict. c. 15, s. 15.

Chap. IV. the High Court to Her Majesty's Court of Appeal ;
— and from thence to the House of Lords.

SECTION IV.—SCHEDULE D.

Deductions on Payment of Interest of Money, &c., from Profits charged under Schedule D.—¹ Whenever it is proved to the satisfaction of the Commissioners acting for the district in which the person making the application resides, that any interest of money, annuity, or other annual payment, is annually paid out of the profits and gains *bonâ fide* accounted for, and charged, under Schedule D., without any deduction on account thereof, such Commissioners may grant a certificate under the hands of any two of them, in the ²prescribed form, and such certificate will entitle the person so assessed, upon payment of such interest, &c., to deduct so much as the duty upon such interest would amount to ; and such deduction must be allowed by the person entitled to receive such interest, &c. But no such certificate is required when such payments are made out of the profits or gains arising from lands, tenements, or hereditaments, or of any office, or employment of profit, or out of any annuity, pension, or stipend, or any dividend or share in public annuities, in order to authorize the making of such deductions.

¹ 5 & 6 Vict. c. 35, s. 104.

² The Board have a general authority to prescribe, supply, and approve forms. 43 & 44 Vict. c. 19, s. 15.

Exemption in Case of Charitable Institutions from Duties on Interest chargeable under Schedule D.—

¹ Every corporation, fraternity, or society of persons, and trustee, for charitable purposes only, is entitled to the same exemption in respect of any yearly interest, or other annual payment, chargeable under Schedule D., in so far as the same is applied to charitable purposes only, as ² is allowed to such corporation, &c., in respect of any stock, or dividends, chargeable under Schedule C., and applied to like purposes. The exemption is allowed by the Special Commissioners, on due proof before them; and the amount of the duties paid by such corporation, &c., in respect of such interest or annual payment, either by deduction or otherwise, is repaid under the order of the Special Commissioners in the ³ same manner as sums allowed by them in pursuance of any exemption contained in Schedule C. are repaid.

⁴ The claim to exemption by any trade union entitled thereto under the "Trade Union (Provident Funds) Act, 1893," is to be claimed and allowed in the same manner as is prescribed by law in the case of income applicable and applied to charitable purposes.

If it was the intention of those who framed the section above referred to, to effectuate an

Case of
Trustees
of Psalms
and Hymns
v. Whit-
well.

¹ 5 & 6 Vict. c. 35, s. 105.

² See *ante*, p. 100.

³ See *ante*, p. 288.

⁴ 56 Vict. c. 2, s. 2.

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intention similar to that expressed in Schedule C., with regard to stock of charitable institutions, that intention has not been effectuated. Certain trustees published a hymn book, and in accordance with the directions of the trust deed distributed the profits among widows and orphans of Baptist ministers and missionaries. It was held that such profits were ordinary trade profits, not "yearly interest" or an "annual payment" within the meaning of this section, and were, therefore, not exempt from income tax. *The Trustees of Psalms and Hymns v. Whitwell*, 7 T. L. R. 164.

Exemption in Case of Persons whose Income is less than 150l. a Year; and Abatement in case of Persons whose Income is less than 400l. a Year.—¹ This exemption, and abatement, respectively, may be claimed in respect of duties charged under Schedule D., as well as in respect of duties charged under Schedule A.; and the mode of claiming the exemption or abatement with reference to duties charged under Schedule D. is similar to ²that prescribed for claiming the same with reference to duties charged under Schedule A.

Abatement on Account of Life Assurance, or Purchase of Deferred Annuity.—The claim to this abatement, in

¹ 5 & 6 Vict. c. 35, ss. 163—170; 39 & 40 Vict. c. 16, s. 8.

² See *ante*, pp. 265—269, 271.

case the duty has been assessed without deduction on ^{Chap. IV.} that account and has been paid as assessed, is made in like manner as a similar ¹ claim by a person charged under Schedule A.

Allowance on Account of Diminished Value of Machinery by Wear and Tear.—² In the case of any trade, manufacture, or concern in the nature of trade, chargeable under Schedule D., when any machinery or plant used for the purposes of the trade, &c., is let upon such terms that the burden of maintaining, and restoring, the same falls upon the lessor, he is entitled, upon claim made to the Special, or General, Commissioners in the manner prescribed by sect. 61 of 5 & 6 Vict. c. 35, to have repaid to him such a portion of the sum which has been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as represents the income tax upon such an amount as the Commissioners think reasonable, as representing the diminished value by reason of wear and tear of the machinery or plant during the year. But no such claim is allowed, unless it is made within twelve calendar months after the expiration of the year of assessment.

¹ See *ante*, pp. 271, 272.

² 41 & 42 Vict. c. 15, s. 12. We are dealing now, it will be observed, only with the claim to repayment made by the lessor of machinery, &c. As to the deduction for diminished value of machinery, &c., made upon assessment of any such trade, &c., as above mentioned, see *ante*, p. 60.

Chap. IV. *Appeal against Assessment made by Additional Commissioners, &c.—Notice of Day for.*—¹ If any person thinks himself aggrieved by an assessment made by the Additional Commissioners, or by any objection to such assessment made by any Surveyor, he may appeal to the General Commissioners, in the same district in which the assessment was made. Ten days' notice of the intention to appeal must be given to the Surveyor. ² If the person assessed removes from the district in which he was assessed without appealing, and afterwards desires to appeal, the Board may, if they think fit, upon his application, authorize the General Commissioners for the district to which he has removed, to hear and determine his appeal, in like manner as if it had been prosecuted before the General Commissioners for the district in which he was assessed. The General Commissioners must from time to time appoint days for hearing appeals as soon after any assessment is returned to them by the Additional Commissioners as can conveniently be done; and the Assessors must give notice of the days so appointed to the different appellants. The meetings of the Commissioners for the purpose of hearing appeals are held from time to time, within the time limited by the Commissioners, ³ who cause a general notice to be fixed up

¹ 5 & 6 Vict. c. 35, s. 118.

² 16 & 17 Vict. c. 34, s. 55.

³ 5 & 6 Vict. c. 35, s. 119.

in their office, or left with their clerk, and also Chap. IV. to be affixed on, or near to, the door of the church, or chapel, of the parish or place; or, if such parish or place has no church, or chapel, then on, or near to, the door of the church, or chapel, of some adjoining parish or place, limiting the time for hearing all appeals. ¹No appeal can, as a general rule, be received after the time so limited, except ²on account of diminution of income, ³but if any person is prevented by absence, sickness, or other reasonable cause, to be allowed by the Commissioners, from making, or proceeding upon, his appeal within the time so limited, the Commissioners may give further time for that purpose; or may admit the appeal to be made by any agent, clerk, or servant, on behalf of such appellant; and ⁴if the appeal is made on behalf of any person who is absent out of the realm, or prevented by sickness from attending in person within the time so limited, the Commissioners may postpone such appeal from time to time, or admit other proof than the oath of the appellant of the truth of ⁵the several matters required to be proved by his oath.

¹ 5 & 6 Vict. c. 35, ss. 118 and 119.

² As to appeals on account of diminution of income, see *post*, pp. 303—306.

³ 5 & 6 Vict. c. 35, s. 118.

⁴ 5 & 6 Vict. c. 35, s. 119.

⁵ As to these matters, see *ante*, pp. 275—278.

Chap. IV. *Proceedings after Notice of Appeal given, and when Objection of Surveyor allowed.*—¹ The General Commissioners, upon receiving notice of appeal against any assessment made by the Additional Commissioners, and also whenever they see cause to allow an objection of the Surveyor to such assessment, direct their precept to the appellant to return to them, within the time limited in the precept, a schedule containing such particulars as the Commissioners may demand respecting the property of the appellant, or the trade, manufacture, adventure, or concern in the nature of trade, or the profession, employment, or vocation, carried on and exercised by the appellant, and the amount of the balance of his profits and gains, distinguishing the amounts received from each ²separate source, or respecting the particulars of the deductions from any of such profits or gains made in the statements or schedules delivered by him. The Commissioners may demand such schedules at their discretion, whenever they think them necessary, from time to time, until a complete schedule satisfactory to them of all the particulars required by them has been delivered. The precept of the Commissioners is delivered to the appellant, or left at his last, or usual, place of abode; or, if the appellant has removed from the jurisdiction of the Commissioners, or cannot be found, is fixed on, or near to, the door

¹ 5 & 6 Vict. c. 35, s. 120.

² As to these sources, see *ante*, pp. 124, 154, 156, 158 and 162.

of the church, or chapel, of the place where the Chap. IV. Commissioners meet, and is thereupon binding upon the appellant. The Surveyor has free access, at all reasonable times, to any schedule delivered in pursuance of the precept of the Commissioners, and may take such copies thereof, or extracts therefrom, as he may think necessary. ¹ He may within a reasonable time after examining any such schedule, to be allowed by the Commissioners, object to the schedule, or any part thereof, and state his objection in writing; and in such case he must deliver a notice in writing of his objection, under cover, sealed up, and directed to the appellant, or leave the same at his last, or usual, place of abode, in order that the appellant may, if he thinks fit, appeal from the objection to the Commissioners. No assessment can be confirmed, or altered, until the appeal upon the objection, or the assessment, has been heard and determined. ² If upon receiving the objection of the Surveyor to any schedule the Commissioners see cause to disallow the objection, or if upon hearing any appeal they are satisfied with the assessment made by the Additional Commissioners, or if after delivery of a schedule they are satisfied therewith, and have received no information of its insufficiency, the General Commissioners direct such assessment to be confirmed, or altered, as the case requires. But if the General

¹ 5 & 6 Vict. c. 35, s. 121.

² 5 & 6 Vict. c. 35, s. 122.

Chap. IV. Commissioners think that the statement upon which the Additional Commissioners made their assessment, or the schedule delivered to themselves, should be verified, they direct the Assessor to give notice to the person charged to appear before them to verify the statement or schedule, and such person must appear accordingly and verify the contents of his statement or schedule on oath and sign the same; but he is at liberty to amend the statement or schedule before being required to take the oath. The Commissioners may also, if they are dissatisfied with any assessment returned to them by the Additional Commissioners, or with any schedule delivered to them, or if they require any further information, make the enquiries and proceed in the manner we have¹ before described. After such oath, and whenever the statement or schedule has not been objected to, and the Commissioners are satisfied therewith, they make an assessment according to the statement or schedule, which is final and conclusive as to the matters contained in the statement or schedule.² When any person has neglected, or refused, to return a schedule according to the exigency of the precept of the Commissioners, or any clerk, agent, or servant, of any such person, being summoned, has neglected, or refused, to appear before the Commissioners to be examined, or if any such person, or his clerk, agent, or servant, being

¹ *Ante*, pp. 238—240.

² 5 & 6 Vict. c. 35, s. 126.

summoned has declined to answer any question put Chap. IV. to him in writing, or *viva voce*, by the Commissioners, or where any schedule delivered has been objected to and the objection has not been appealed against, or when any person being required to verify his statement or schedule, or his answers, or examination in writing, shall have neglected, or refused, to do so, or when the Commissioners agree to allow the objections, or any of them, made by the Surveyor, the Commissioners settle and ascertain according to the best of their judgment in what sums the person chargeable ought to be charged, and make an assessment accordingly, which is final and conclusive. ¹ In every case in which the General Commissioners have made any increased assessment upon the amount contained in the statement or schedule of the person to be charged, or at any time discover that any increase ought to be made, whether upon the surcharge of the Surveyor, or from his information or otherwise, they may charge such person in a sum not exceeding treble the amount by which the duties have been increased, unless he makes it appear to the satisfaction of the Commissioners that the omission complained of did not proceed from any fraud, covin, act, or contrivance, or from gross, or wilful neglect.

Appeal may be to Special Commissioners instead of to General Commissioners.—² In any case in which an

¹ 5 & 6 Vict. c. 35, s. 127.

² 5 & 6 Vict. c. 35, s. 130.

Chap. IV. appeal is allowed to be made to the General Commissioners against any assessment under Schedule D., or against any objection of the Surveyor to such assessment, or against any surcharge of the duties, he may, if he thinks fit, instead of appealing to the General Commissioners, appeal to the Special Commissioners. In that case he must give notice in writing of his intention to the Surveyor, within the time limited for notice of appeal to the General Commissioners in similar cases. The appeal is then heard and determined by two or more of the Special Commissioners directed by the Board to hear appeals in the district in which the appellant is chargeable; and their determination is final and conclusive. But every appeal upon a claim to exemption on account of the appellant's income being less than 150*l.* a year, or ¹upon a claim to abatement on account of the appellant's income being less than 400*l.* a year, must be made to the General Commissioners.

Appeal in Case of Assessment by Special Commissioners on Application of Persons chargeable.—² An assessment made by the Special Commissioners upon the application of the person chargeable is subject to appeal by either the person charged, or the Surveyor; and the appeal is made in like manner, and

¹ 5 & 6 Vict. c. 35, s. 130; 16 & 17 Vict. c. 34, s. 28; 39 & 40 Vict. c. 16, s. 8.

² 5 & 6 Vict. c. 35, s. 131.

under like rules and regulations, as¹ an appeal Chap. IV. against an assessment made by the Additional Commissioners; but every such appeal is heard and determined by the Special Commissioners directed by the Board to hear appeals in the district. If either the person charged, or the Surveyor, thinks the determination of the Special Commissioners on any such appeal is wrong, and then expresses himself dissatisfied therewith, the Commissioners must, if required, state specially, and sign, the case upon which the question arises, with their determination thereon, and transmit the same to the Board for their opinion, who, with all convenient speed, state, and subscribe, their opinion on the case so transmitted, and according to the opinion of the Board, whose decision is final and conclusive, the assessment is altered or confirmed.

Relief on Account of Diminution of Income.—²If within, or at the end of, the year current at the time of making any assessment, or at the end of any year when such assessment ought to have been made, any person charged to the duties under Schedule D.,

¹ See *ante*, pp. 296 *et seq.*

² 5 & 6 Vict. c. 35, s. 133.

³ That is “in as short a time as, by using all reasonable and proper exertions, the party claiming can possibly have ascertained the fact and amount of the overpayment.” Lord Esher, M. R., in *Reg. v. Commissioners of Income Tax, In re Cape Copper Mining Co.*, 21 Q. B. D. 313; 36 W. R. 776; 57 L. J., Q. B. 513; and see *Russell v. North of Scotland Bank*, 28 Sco. L. R. 389.

Chap. IV. finds, and proves to the satisfaction of the General Commissioners, that his profits and gains during such year fell short of the sum at which those profits and gains were computed, in respect of the same ¹source of profit as that upon which the computation was made, the Commissioners may amend the assessment for such current year as the case may require; and, if the sum assessed has been paid, they certify under their hands to the Special Commissioners, at the ²Chief Office for Inland Revenue in England, the amount of the sum overpaid upon the assessment, and thereupon the Special Commissioners³ issue an order for the repayment of the sum overpaid, directed to the Receiver General of Inland Revenue, or to an officer for receipt, or Collector, of the duties, or to a distributor, or sub-distributor, of stamps, as in the case of ⁴allowances granted under No. 5 of Schedule A. ⁵But no such reduction or repayment will be made in any case unless the profits of the year of assessment are proved to be less than the profits for one year on the average of the last three years, including the year of assessment; and no such

¹ As to the sources of profit, see *ante*, pp. 124, 154, 156, 158 and 162.

² 12 & 13 Vict. c. 1, s. 17.

³ If the Special Commissioners wrongfully decline to issue an order for repayment, a mandamus will lie to compel them. *Reg. v. Commissioners of Income Tax, In re Cape Copper Mining Co., ubi sup.*

⁴ As to these allowances, see *ante*, pp. 262—264, 275.

⁵ 28 & 29 Vict. c. 30, s. 6.

relief will exceed in amount the difference between Chap. IV. the sum on which the assessment has been made and such average profits for one year as aforesaid. ¹ And in case any person charged to the duties under Schedule D. ceases to exercise the profession or to carry on the trade, employment, or vocation in respect of which the assessment was made, or dies, or becomes bankrupt or insolvent before the end of the year for making the assessment, or from any other specific cause, is deprived of, or loses, the profits or gains on which the computation of duty was made, such person, or his executors or administrators, may apply to the General Commissioners of the district within three calendar months after the end of such year; and upon proof of the facts to the satisfaction of the Commissioners, they may amend the assessment as the case may require, and give such relief to the person charged, or to his executors or administrators, as is just. In cases requiring the same, the Commissioners may order repayment to be made as above of the sum overpaid. But when any person has succeeded to the trade or business of the person charged, no abatement is made, unless the Commissioners are satisfied that the profits and gains of such trade or business have fallen short from some specific cause since such change or succession took place. ² If a person who has sustained a loss in any

¹ 5 & 6 Vict. c. 35, s. 134.

² 53 & 54 Vict. c. 8, s. 23.

Chap. IV. trade, manufacture, adventure or concern, or profession, employment or vocation, carried on by him either solely or in partnership, seeks an adjustment of his liability by reference to the loss, and to the aggregate amount of his income for the year, he may obtain such adjustment in the manner ¹before stated.

Appeal against Surveyor's Charges and against Surcharges.—What ²has been said of appeals against a Surveyor's charges, and against surcharges under Schedule A., applies equally to appeals against similar charges and surcharges under Schedule D.

Case for Opinion of High Court.—³Upon the determination of any appeal by the General Commissioners, or by the Special Commissioners, either the appellant or Surveyor may, if dissatisfied with the determination as being erroneous in point of law, require a case to be stated in the manner we have ⁴before described. ⁵An appeal lies from the decision of the High Court to Her Majesty's Court of Appeal, and from thence to the House of Lords.

Relief from Double Assessment.—⁶Whenever it appears to the Board that a person has been assessed

¹ See *ante*, pp. 303 *et seq.*

² *Ante*, pp. 282 *et seq.*

³ 43 & 44 Vict. c. 19, s. 59.

⁴ *Ante*, pp. 280, 282.

⁵ 41 & 42 Vict. c. 15, s. 15; 43 & 44 Vict. c. 19, s. 59.

⁶ 43 & 44 Vict. c. 19, s. 60.

more than once to the duties for the same cause and Chap. IV. for the same year, they direct the whole, or such part, of any assessment appearing to be an overcharge to be vacated.

SECTION V.—SCHEDULE E.

Claims of Exemption, Appeals, &c. upon Assessments under Schedule E.—There is not much to be said with regard to claims of exemption, and abatement, and appeals made upon assessments under Schedule E. The necessity for making such claims or appeals can rarely, if ever, arise in cases where the assessment is made by the Commissioners for the particular office, or department, in which the employment of profit, which is the subject of assessment, is carried on. In cases where the assessment is made by the General Commissioners of a district, much of what we have said upon the subject of claims and appeals in dealing with assessments made under the other schedules, will be applicable to assessments under Schedule E. We will add only the following provisions, which have special reference to the last-mentioned assessments :—

1. ¹When a change has taken place during the year of assessment in any office or employment, chargeable under Schedule E., the assessment in respect of such office or employment is levied for the whole year, notwithstanding such change, without any new

¹ 5 & 6 Vict. c. 35, s. 146, r. 1.

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assessment; but the person quitting such office or employment, or dying within the year, or his executors or administrators, is, or are, liable for the arrears due before, or at the time of, his so quitting such office or employment, or dying, and for such further period of time as shall then have elapsed, to be settled by the respective Commissioners; and his successor has a right to be repaid such sums as he has paid for duty on account of such portion of the year as aforesaid; and each such assessment remains in force for one whole year unless the office, or employment, or the annuity, pension, or stipend, payable in respect thereof ceases, or expires within the year by lapse, death, or otherwise, from which period the assessment is discharged.

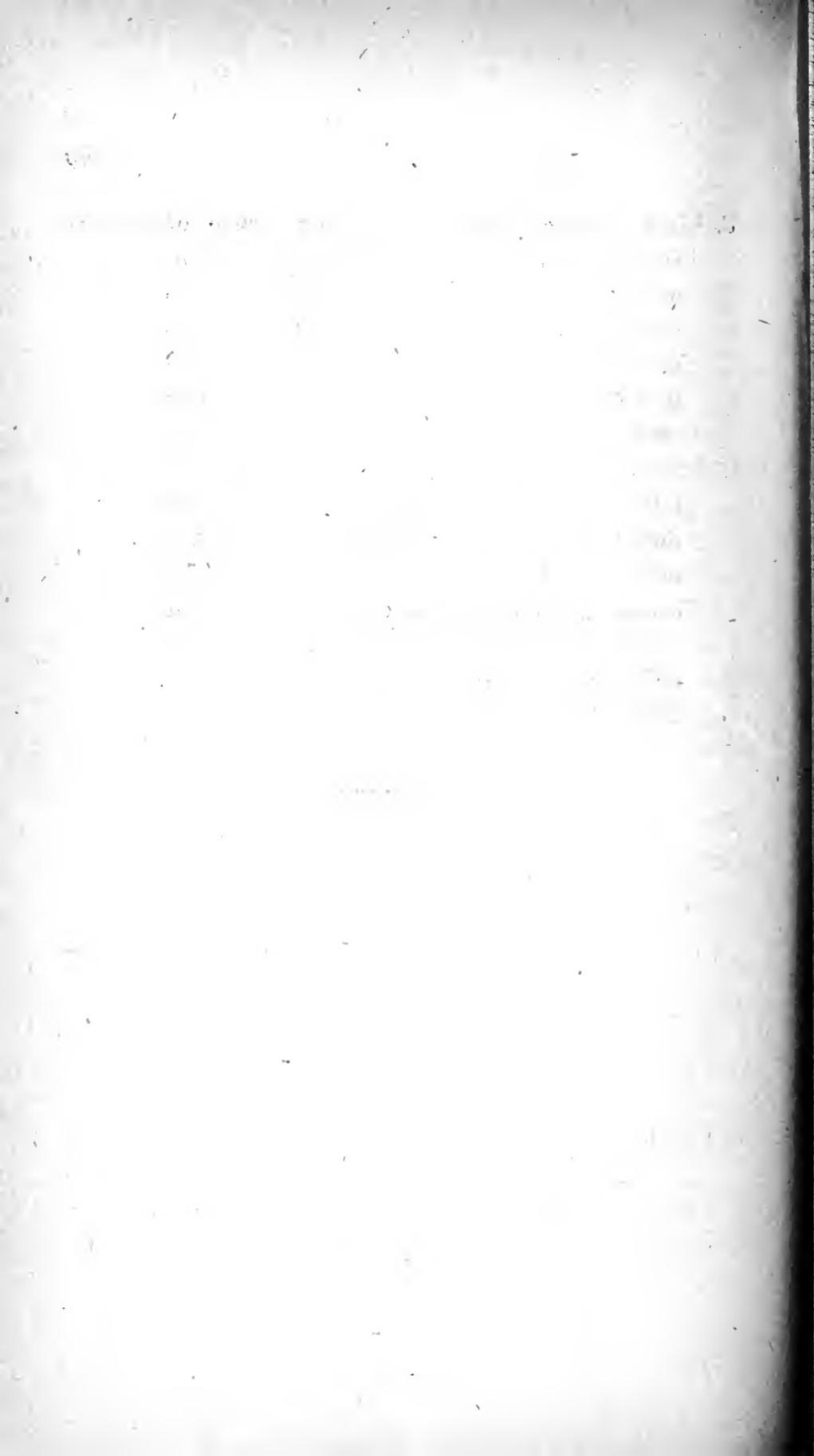
2. ¹In every case in which any person holding any office or employment, or being entitled to any pension, or stipend, claims to be exempt from such assessment, the Commissioners must nevertheless set down in such assessment the name of such person, and the full and just value of such office, &c.; and the claim to such exemption must be preferred, and examined, and the merits thereof heard and determined, under the regulations in force with respect to other assessments.

¹ 5 & 6 Vict. c. 35, s. 152.

3. ¹In cases of claim to exemption on account of Chap. IV.
the claimant's income being less than 150*l.* a year, where the whole income of the claimant arises from an office, or employment of profit, the duties whereon are cognizable before the Commissioners of a department of office, or from a pension, or stipend, the claim may be made to, and allowed by, the Commissioners of the department in which the duties are cognizable; and if the claimant is out of Great Britain the facts required to be stated in support of the claim may be stated by affidavit taken before any person having authority to administer an oath in the place where the claimant resides.

¹ 5 & 6 Vict. c. 35, s. 169.





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